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Appeal from original decree No. 25 of 1936.

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PART I.

APPEAL FROM ORIGINAL DECREE

No. 25 of 1936.

MAHMUDA BIBI *alias* MOHENUDA BIBI (*One of the plaintiffs*) ... ... *Appellant,*

versus

IFFAT ARA HAMIDI BEGUM AND OTHERS (*Defendants and the other plaintiffs*) ... ... *Respondents.*

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PART I.

APPEAL FROM ORIGINAL DECREE

No. 25 of 1936.

MAHMUDA BIBI *alias* MOHENUDA BIBI (*One of the plaintiffs*) ... ... *Appellant,*

versus

IFFAT ARA HAMIDI BEGUM AND OTHERS (*Defendants and the other plaintiffs*) ... ... *Respondents.*

No. 1.

Nos. 1-12(35)—*Order-sheet in Title Suit No.* 17 *of* 1931 / 38 *of* 1932 / 112 *of* 1932 / 2 *of* 1934 *of the* 3rd *Court* / 2nd *Addl. Court* / 4th *Court* / 3rd *Addl. Court of the Subordinate Judge, 24-Parganas.* (*Extracts*).

In the 3rd *Court* / 2nd *Addl. Court* / 4th *Court* / 3rd *Addl. Court of the Subordinate Judge, 24-Parganas.*

Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934.

No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).

Form of order-sheet.

(C. O. No. 7, dated the 2nd June, 1890).

3rd Court of the Subordinate Judge, 24-Parganas.

T. S. No. 112 of 1932 of the 4th Sub-Judge's Court, Alipore.

Title Suit No. 17 of 1931 (Partition).

Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
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1	30-1-31.	Register. Issue summons to the defendants fixing 27th Feb-		

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In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas.	Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
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Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934.			ruary 1931, for settlement of issues ...	R. M., Sub-Judge.	
No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).	2	27-2-31.	Service of summons not satisfactory. Issue fresh summons upon the defendants fixing 12th March 1931 for settlement of issues. Requisites to be filed within 3 days ...	R. M., S. J.	
	3	2-3-31.	Plaintiff puts in a petition for issue of registered post-card upon the defendants. Issue registered post-card upon the defendants in modification of the previous order. Requisites to be filed within 2 days ...	R. M., S. J.	
	4	12-3-31.	Defendant applies for time to file defence. The case is adjourned to 25th March 1931 for filing written statement. Defence to be filed by the defendant in the meantime ...	R. M., S. J.	
	5	25-3-31.	Defendant applies for further time to file written statement. The case is adjourned to 7th April 1931 for filing defence. Written statement to be filed on or before the date fixed ...	R. M., S. J.	

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
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6	7-4-31.	Sm. Mahmuda Bibi puts in a petition under Order 1 Rule 10 C. P. C. for substituting her name in place of the plaintiff. Defendant applies for time to file written statement. The case is adjourned to 16th April 1931 for filing defence. In the meantime applicant to supply copies of this petition to the parties concerned. Let this petition be put up on the date fixed for orders ...	R. M., S. J.	
7	16-4-31.	The pleader for the original plaintiff and the defendants to state if they have any objection to the substitution of Sm. Mamuda Bibi in place of the plaintiff. The defendant No. 1 to file his written statement after substitution if allowed or after the order on Mahmuda Bibi's petition. Put up to-morrow for order ...	R. N. B. Sub-Judge.	
8	17-4-31.	The original plaintiff is reported to be dead. Let notices be issued on the legal heirs of the original plaintiff before substitution of Mamuda Bibi in her place by virtue of assignment or as co-plaintiff. The defendant No. 1 is said to		

In the 3rd Court
2nd Addl. Court
4th Court
3rd Addl. Court of the Subordinate Judge, 24-Parganas.

Title Suit No.
17 of 1931
38 of 1932
112 of 1932
2 of 1934.

No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).

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In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas.	Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934.			be legal heir of the original plaintiff. He is to supply the names of other heirs if any, within a week. Put up again on the 24th April for orders...	R. M.	
No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).	9	24-4-31.	Defendant No. 1 puts in a petition describing the names of the heirs of the deceased plaintiff. Applicant puts in a petition for issue of notice to the heirs of the deceased. Issue notice upon the heirs other than the appearing defendant to show cause within a week from the date of service of notice why the applicant should not be made plaintiff in this case in place of the original plaintiff fixing 8th May 1931 for orders. Appearing defendant to file his objection if any in the meantime ...	R. M., S. J.	
	8	8-5-31.	Defendant No. 1 applies for time for the reasons stated in the petition. Return of service of notice upon defendant No. 2 not received. To 19th May 1931 for orders for want of return. Objection if any to be filed by defendant No. 1 in the meantime ...	R. M., S. J.	

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
9	19-5-31.	Applicant puts in a petition for substituting her in place of the plaintiff. Defendant No. 1 applies for time. To 5th June 1931 for orders. Issue summons to defendant No. 1's witness at his own risk. Defendant No. 1 to deposit diet money within 2 days. Defendant No. 1 puts in another petition for keeping the documents filed by him to-day in safe custody. Let the document be kept in safe custody with the Sheristadar. Notice upon defendant No. 2 not duly served. Issue registered post-card notice with acknowledgment due upon defendant No. 2. Requisites to be filed by the applicant within 3 days ...	R. M., S. J.	
*	*	*	*	*
11	6-6-31.	Assignee's petition for substitution in place of the deceased plaintiff is put up to-day. Heard pleaders on both sides. Registered post-card issued for service upon the husband of the deceased plaintiff returned with remark "left". I think substituted service is resorted to. Applicant to take necessary steps for the pur-		

In the 3rd Court
2nd Addl. Court
4th Court
3rd Addl. Court of the Subordinate Judge, 24-Parganas.

Title
Suit No.
17 of 1931
38 of 1932
112 of 1932
2 of 1934.

No. 1.
Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).

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In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas.	Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934.			pose within 7 days. Put up on 13th June 1931 for orders..	S. B., S. J.	
No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).	12	13-6-31.	Applicant puts in a petition for issue of notice under Order 5 Rule 20 C. P. C. Process and process-fee filed. Issue notices as prayed for fixing 3rd July 1931 for orders ...	(Illegible), Sub-Judge-in-charge.	
	*	*	*	*	
	22	1-10-31.	Sayed Mohammad Hasem Ali Khan appears to-day and prays for inspection of the documents filed by the parties. Copies of this petition served upon the pleaders of both parties. Pleader for the defendant objects to the inspection. Let this petition be put up on the date fixed for orders in presence of both sides' pleaders. Objection if any must be put in on or before the date fixed ...	S. B., S. J.	
	23	5-10-31.	Nawab Sayed Mohammad Hashem Ali Khan puts in a petition for substituting him in place of the deceased plaintiff. Heard pleaders for the parties. Considered appli-		

CC-0. Jangamwadi Math Collection. Digitized by eGangotri

Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
		cant's petition. Let Nawab Sayed Mohammed Hashem Ali Khan be substituted in place of the deceased plaintiff. The defendant No. 1 who is also an heir of the deceased plaintiff does not like to be made as(*sic*) plaintiff. Amend plaint and register of(*sic*) suits accordingly. Objection put in by the present plaintiff be kept with the record and put up when the petition of the Assignee comes up for hearing. The substituted plaintiff is permitted to inspect the documents filed by the other sides in presence of the Sheristadar and the Pleaders for other parties to-morrow before 5 P. M. The petition of the Assignee be put up on 20th November 1931 for hearing. Parties must come prepared on that day ...	S. B., S. J.	
*	*	*	*	*
26	23-11-31.	In this suit one Mahmuda Bibi has applied for substitution as plaintiff in place of the original plaintiff Juhi Begum on the allegation that she has stepped into her shoes by virtue of an assignment made in her favour of all her interest		

In the 3rd Court
2nd Addl. Court
4th Court
3rd Addl. Court of the Subordinate Judge, 24-Parganas.

Title
Suit No.
17 of 1931
38 of 1932
112 of 1932
2 of 1934.

No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1936. (Extracts).

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In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas.	Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
	1	2	3	4	5
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in the suit properties. Meanwhile Juhi Begum died and her husband has been substituted as plaintiff and her brothers remain in the category of the defendants, these two constituting co sharers proprietors. Now both the husband and the brothers appear. This proprietor was substituted, impeaching the validity and the *bonafides* of the deed of assignment set up by Mahmuda Bibi and (torn). It is not desirable at this stage to enter into the intricate question of title raised by the brothers and the husband, as they will have to be decided again at trial if the prayer for substitution is allowed. So I refused to substitute the applicant Mahmuda Bibi as an added plaintiff on formal proof of the deed of assignment and allow the brother and the husband to impeach the validity of the said deed and raise other questions relating to the suit at the time of trial. All the proprietors agreed to(?) this Court and further that the deed of assignment should be proved formally by an affidavit and this must be done. This being so Mahmuda Bibi will be added as a plaintiff in this

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		case the husband and the brothers, who figure as plaintiffs already and the defendant respectively will be at liberty to attack the validity of the deed of assignment and raise other questions in this case. They will further be at liberty to put in further statements in this case. No orders for costs for hearing of this application ...	K. C. Sen, S. J.	
	*	* *		*
30	7-1-32.	Issues framed. To 22nd January 1932 for taking steps. Parties must file their documents and cite witnesses and take all other necessary steps in the meantime ...	K. C. S., S. J.	
31	20-1-32.	Plaintiff files two acknowledgment receipts. Let it be filed with the record. The admissility or otherwise of these documents will be considered at the time of the trial of the case ...	K. C. S., Sub-Judge.	
	*	* *		*
38	23-5-32.	Under order of the District Judge this suit is transferred		

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	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934.			to Subordinate Judge, Additional 2nd Court for disposal..	(Illegible), S. J.	
No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).	39	24-5-32,	Received by transfer from the local 2nd Sub-Judge's Court..	S. C. D., S. J.	
	*	*	*		*
	43	30-8-32.	On the application of the plaintiff let summons on his witnesses be issued at his own risk as prayed for ...	S. C. D., S. J.	
	*	*	*		*
	45	22-9-32.	Defendant Mirza Mahammad Said Ali files a petition on praying that the plaintiff may be directed to furnish security beforehand for the reasons stated in the petition.		
			Put up *on 28th September 1932* for orders in presence of the pleaders of both parties ...	S. C. D., S. J.	
	46	26-9-32.	Defendant files a petition praying for an order upon the plaintiffs to make a discovery of all the documents in their possession and power.		

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		Defendant to give copy to the other sides. Put up on 8th November 1932 for orders ...	S. C. D., S. J.	
47	28-9-32.	Defendant has filed certain documents as per list. The question of admissibility will be considered when going into evidence ...	S. C. D., S. J.	
48	28-9-32.	Defendant No. 1 files a petition supported by an affidavit praying for his examination on commission.		
		Put up on the date fixed ...	S. C. D., S. J.	
*	*	*	*	*
53	6-12-32.	Plaintiff applies for time on the ground that she has applied for the transfer of this suit to the local 4th Sub-Judge's Court to be tried with T. S. 8 of 1931. The suit is adjourned to 16th January 1933 for hearing the matter referred to in Orders Nos. 45, 46 and 48 ...	K. B., S. J.	
54	23-12-32.	Transferred to the 4th Sub-Judge's Court for analogous trial with T. S. No. 8 of 1931		

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	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934.			of that Court as per order, dated 20th December 1932, passed in Misc. Jdl. Case No. 249 of 1932 of District Judge's Court, 24-Parganas ...	K. B., S. J.	
No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).			T. S. No. 112 of 1932 (4 S. J.)		
	55	23-12-32.	Received by transfer from the local 2nd Addl, Sub-Judge's Court at 4-30 P. M. this day. Register. Put up on the date fixed for hearing ...	S. C. D., S. J.	
	*	*	*		*
	58	3-2-33.	The petition filed by the defendant No. 1 for directing the plaintiffs to furnish security for the costs of the suit is taken up. Heard pleaders of the parties.		
			Defendant has applied under Order 25 Rule 1. After hearing the pleaders of both parties I do not think it is a fit case in which petitioner should be asked to furnish security. Moreover, this is not a suit for payment of money and so defendant's application under clause (3) of Art. 25 Rule 1 is not maintainable. The application of defendant is therefore rejected ...	S. C. De.	

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
*	*	*		*
62	4-2-33.	An affidavit of document is filed on behalf of the plaintiff. Give copy of it to the pleader for the defendant No. 1 ...	S. C. D., Sub-Judge.	
63	16-2-33.	A petition of objection against the petition of the defendant No. 1 for his examination on commission is filed on behalf of the plaintiff. Give the copy of the same to the pleader for the defendant No. 1 and put up on 22nd February 1933 for hearing in the presence of the pleaders of the parties ...	S. C. D., Sub-Judge.	
64	17-7-33.	Documents as per list are filed on behalf of the defendant No. 1 to be kept in the previous tin box filed by them. Let them be kept so. Their admissibility or otherwise will be considered at the time of hearing ...	S. C. D., Sub-Judge.	
65	18-2-33.	Affidavit of documents filed by the plaintiff and copy of the same given to the pleader for the defendant ...	S. C. D., Sub-Judge.	

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No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).

Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
66	22-2-33.	The defendant No. 1 filed a petition supported by an affidavit and a medical certificate for examination of his witness Serajul Ulema Altaf Hossain Mufti Hairi on commission. The petition was misplaced aud not put up on 7th February 1933. The defendant No. 1 to give a copy of the petition to the pleader for the plaintiff at once. Put up on 28th February 1933 for hearing the petition ...	S. C. D., Sub-Judge.	
67	22-2-33.	Heard pleaders of the parties regarding the petition of the defendant No. 1 for his examination on commission. The order is reserved ...	S. C. D.	
68	24-2-33.	The application for commission is supported by an affidavit and medical certificate. The application is allowed ...	S. C. D.	
69	24-2-33.	The defendant No. 1 to deposit commission for Rs. 12 within 3 days. Put up on 28th February 1933 ...	S. C. D., Sub-Judge.	
70	28-2-33.	The petition for examination of Serajul Ulema Altaf Hossain Mufti Hairi is taken up. The plaintiff puts in a petition		

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
		supported by an affidavit raising objections. Heard pleaders of the parties. The application for commission is supported by a medical certificate. Order. The application for commission is allowed ...	S. C. De,	
		* * *		*
72	28-2-33.	The defendant No. 1 to deposit Rs. 24 as commission-fee by to-morrow ...	S. C. D., Sub-Judge.	
73	1-3-33.	Slip No. 2724 dated 1st March 1933 showing deposit of Rs. 24 as commission-fee is filed on behalf of the defendant No. 1. Let Babu Suren Lal Sarkar a pleader of this Court be appointed Commissioner to take down the evidence of Mirza Mohammad Syed Ali the defendant No. 1. The Commissioner to submit his return on or before the date of hearing. Issue writ accordingly ...	S. C. D., Sub-Judge.	
74	1-3-33.	Slip No. 2724 dated 1st March 1933 showing deposit of the sum of Rs. 24 as commission fee is filed on behalf of the defendant No. 1. Let Moulavi Abdul Karim a pleader of this		

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	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934. No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).			Court be appointed Commissioner to take down the evidence of Serajul Ulema Altaf Hossain Mufti Hairi a witness for the defendant No. 1. The Commissioner to submit his return on or before the date of hearing. Issue writ accordingly ...	S. C. De, Sub-Judge.	
	75	3-3-33.	The plaintiff Mahmuda Bibi puts in a petition praying for time to bring stay orders from the Hon'ble High Court against the order of examination on commission of Serajul Ulema Altaf Hossain Mufti Hairi a witness for the defendant No. 1 and for stay of issuing writ to the Commissioner. Heard pleader for the plaintiff. The plaintiff is allowed time for 10 (ten) days to bring stay order from the Hon'ble High Court. In the meantime the writ of commission is stayed ...	S. C. D., Sub-Judge.	
	76	11-3-33.	Received Civil Rule No. 307 of 1933 from the Hon'ble High Court. Let the examination of Sherajul Ulema Altaf Hossain Mufti Hairi be stayed until further orders of the Hon'ble High Court ...	S. C. D., Sub-Judge.	

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
*	*	*	*	*
78	5-4-33.	Received a copy of order from the Hon'ble High Court passed in Civil Rule No. 307 of 1933. The examination on commission of Sherajul Ulema Mufti Hairi will not be made unless a medical certificate from the Civil Surgeon of 24-Parganas is obtained. The plaintiff to deposit Rs. 64 (sixty-four) as fees etc. of the Civil Surgeon of 24-Parganas and slip No. 5 dated 5th April 1933 showing deposit of the sum of Rs. 64 as Civil Surgeon's fees etc., filed by the plaintiff. Write to the Civil Surgeon, 24-Parganas to examine Sherajul Ulema Mufti Hairi of Irdis gate Matiabruz, giving notice of the date and hour of his examination to the pleaders of the parties through this Court. Fees etc. are in deposit ...	S. C. D., Sub-Judge.	
*	*	*	*	*
82	25-4-33.	The plaintiff puts in a petition praying for sending letter to the Civil Surgeon 24-Parganas with acknowledgment due. Send the letter referred to in Order No. 78, dated 5th April 1933 again to the Civil Surgeon		

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	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934.			24-Parganas by registered post with acknowledgment due as prayed for by the plaintiff ...	S. C. D., Sub-Judge.	
No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).	83	26-4-33.	Received letter No. 800 from the Civil Surgeon of 24-Parganas stating 30th April Sunday 9-30 A. M. will suit him to examine the witness at his residence. Inform the pleaders of the parties to arrange with the Civil Surgeon accordingly ...	S. C. D., Sub-Judge.	
	84	3-5-33.	Received a report from the Civil Surgeon of 24-Parganas stating the witness Serajul Ulema Altaf Hossain is in a position to give his evidence in Court in a sitting posture. Inform the pleaders of the parties. The Order No. 70, dated 28th February 1933 is cancelled and the Commissioner to return the writ if issued ...	S. C. D., Sub-Judge.	
	85	Do.	The bill of the Civil Surgeon of 24-Parganas is passed for Rs. 64. The Nazir to remit the same by money-order. The plaintiff to deposit 0-12-0 as commission fee at once. Inform the pleader for the plaintiff ...	S. C. D, Sub-Judge.	

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86	2-6-33.	The plaintiff puts in a petition praying for directing the defendant to come ready on the 6th June next and the pleader for the defendant No. 1 states that his client is lying ill with paralysis and an adjournment will be prayed for on his behalf. File ...	S. C. D., Sub-Judge.	
*	*	*		
88	11-7-33.	On the application of the defendant No. 1 let summons be issued to his witnesses at his risk as prayed for ...	S. C. D., Sub-Judge.	
89	19-7-33.	On the application of the plaintiff let summons be issued to her witnesses at her risk ...	S. C. D., Sub-Judge.	
*	*	*		*
91	31-7-33.	The plaintiff puts in a petition praying for inspection of the documents filed by the defendant. The pleader for the plaintiff is permitted to inspect the document in the presence of the pleader for the defendant and the Sarishtadar of the Court ...	S. C. D., Sub-Judge.	

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	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934. No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).	92	15-8-33.	The plaintiff No. 1 in this case who is defendant No. 2(a) in analogous T. S. No. 8 of 1931 of this Court asks for time on the ground of illness. The plaintiff Mahmuda Bibi is ready with 4 witnesses and the defendants 1 and 2 are ready with 2 witnesses. Heard pleaders of the parties. The suit is adjourned to 24th October 1933 for peremptory hearing with T. S. 8 of 1931 on the application of the plaintiff. But the suit being an old one the plaintiff No. 1 to pay Rs. 20 as adjournment costs to the plaintiff Mahmuda Bibi and Rs. 8 to the defendants 1 and 2 ...	S. C. D., Sub-Judge.	
	93	15-8-33.	The pleader Commissioner Babu Sarashi Lal Sarkar neither submits his report nor takes any step. He is to submit an explanation within a week. Inform him and put up on 23rd August 1933 ...	S. C. D. Sub-Judge.	
	*	*	*	*	
	96	21-11-33.	The defendant No. 1 puts in a petition praying for taking back counter-foil books and account books from 1927 to		

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		1930 filed by him for reference in several rent suits. A copy of the petition has been given to the pleader for the plaintiff. The plaintiff has no objection. Let these documents be returned to the defendant No. 1 on condition to refile them before the hearing of this suit ...	S. C. D. Sub-Judge.	
		* * *		*
98	28-11-33.	The pleader Commissioner apply (*sic*) an extension of time. He must submit his report by 12th December 1933. Inform the pleader Commissioner ...	S. C. D., Sub-Judge.	
99	12-12-33.	The pleader Commissioner submits a report stating that the defendant No. 1 states to adjourn the commission sine die. The defendant No. 1 also files a petition supported by a medical certificate stating that the defendant No. 1 is unfit to be examined on commission. Let the commission be withdrawn. The Commissioner to return the writ at once. Inform the pleader Commissioner ...	S. C. D., Sub-Judge.	

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	1	2	3	4	5
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			Order.		
			Let this substitution be made as prayed for ...	S. C. D.	
No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).	110	14-7-34.	Issue notice upon the substituted minor defendant and his natural guardian fixing 1st August 1934 for appointment of guardian and for orders ...	S. C. D., Sub-Judge.	
	111	1-8-34.	Notice served. The proposed guardian has not appeared. Defendants Nos. 1b and 1c appear and file a petition of objection to the alleged substitution. Put up on 4th Angust 1934 for hearing in the presence of the pleaders of both parties ...	J. N. S., Sub-Judge.	
	112	4-8-34.	Pleaders of both sides heard. Let a copy of the petition of objection be made over to the plaintiff's pleader and put up on 21st August 1934 for orders after hearing the objection ...	J. N. S, Sub-Judge.	
	113	21-8-34.	In view of order No. 71 dated 21st August 1934 passed in T. S. No. 8 of 1931 of this Court the petition filed by		

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		plaintiff for time is rejected. Jahanara Jafri Begum and Kishwar Ara Sadeka Begum be substituted as Mutwallis in place of Shahebzada Syed Ali. The defendant No. 1(a) Iffat Ara Hamidi Begum as self and as guardian of minor defendant No. 1(d) Mirza Md. Wahed Ali and defendant No. 2(a) Iffat Ara Hamidi Begum as self and as guardian of minor defendant Mirza Md. Wahed Ali in the capacity of Mutwalli and Trustee appear and apply for time to file their defence. They are directed to file the same within a week. Put up on 3rd October 1934 for peremptory hearing. Parties to be ready with their evidence on that date. Inform pleaders ...	J. N. S., Sub-Judge.	
114	28-8-34.	Iffat Ara Hamidi Begum Trustee on behalf of her minor son Mirza Wahed Ali defendant No. 1 appears and puts in a petition supported by an affidavit praying for vacating the order of substitution dated 21st August 1934 and for restoring the order of substitution passed on 14th July 1934. Put up on 5th September 1934 for orders. In-		

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	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934.			form the pleaders of the parties ...	J. N. S., Sub-Judge.	
No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).	115	5-9-34.	Defendants 1(b) and 1(c) put in counter-petition supported by an affidavit. Put up on 8th September 1934 for orders along with petition referred to in order No. 114 dated 28th August 1934 ...	J. N. S., Sub-Judge.	
	116	8-9-34.	In view of order No. 75 of the date passed in T. S. 8 of 1931 of this Court. Mirza Md. Wahed Ali minor associated with her(*sic*) mother Iffat Ara Hamidi Begum is substituted as co-Mutwalli ...	J. N. S., Sub-Judge.	
	*	*	*	*	
	118	10-9-34.	Notices upon the substituted minor defendant and his guardian served and the natural guardian appears and express her willingness to act as guardian. Let her appointed guardian *adlitem* of the substituted minor defendant. All the substituted defendants having entered appearance plaintiff to give copies of plaint to their pleaders by 15th Sep-		

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1	2	3	4	5
		tember 1934. Inform the pleaders for the plaintiff ...	J. N. S., Sub-Judge.	
119	11-9-34.	A petition for modification of order dated 8th September 1934 is filed on behalf of Iffat Ara Hamidi Begum on behalf of minor Mutwalli Mirza Md. Wahed Ali is filed for modification of order dated 8th September 1934 and necessary order is passed in T. S. 8 of 1931 *vide* order No. 78 dated 11th September 1934 ...	J. N. S., Sub-Judge.	
120	15-9-34.	Copies of plaint have been given to the pleader for substituted defendants ...	J. N. S, Sub-Judge.	
121	18-9-34.	Nawab Jahan Ara Juffris Begum and Nawab Keshwar Ara Sadeka Begum added defendants put in a petition praying for removal of Iffat Ara Hamidi Begum from the guardianship of the minor Mirza Md. Wahed Ali added defendant. Put up on 27th September 1934 for orders. Inform pleader ...	J. N. S., Sub-Judge.	
122	20-9-34.	The plaintiff puts in a petition praying for appointment of a		

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	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934.			Receiver. Copies of the petition have been given to the other sides. Put up on 25th September 1934. Defendants to file their objections, if any, in the meantime ...	J. N. S., Sub-Judge.	
No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).					
	*	*	*		*
	125	28-9-34.	Petitions of objection to the appointment of Receiver are filed on behalf of Iffat Ara Hamidi Begum on behalf of her minor son Wahed Ali Mirza and Jahan Ara Jafri Begum and Nawab Keshwar Ara Sadeka Begum. Put up on 20th November 1934 for hearing the Receiver matter...	J. N. S., Sub-Judge.	
	*	*	*		*
	129	14-11-34.	Under order of the District Judge let this suit be transferred to the file of the 3rd Addl. Subordinate Judge, Alipore, for disposal ...	J. N. S., Sub-Judge.	
			3rd Addl. Sub-Judge's Court, 24-Parganas.		
			T. S. No. 2 of 1934.		
	130	17-11-34.	Received this day by transfer of the file of the 4th Sub-Judge's		

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
		Court, Alipore. Register and put up on the date fixed for orders ...	N. B., Sub-Judge.	
		* * *		*
133	23-12-34.	As T. S. No. 5 of 1934 has been fixed on 10th December 1934 for peremptory hearing and as its trial is likely to take about a month the date of peremptory hearing of T. S. Nos. 1 and 2 of 1934 is changed to 7th January 1935. Both parties must be ready with evidence on that day. No further adjournment will be granted on that day. Inform the pleaders ...	N. Banerjee, Sub-Judge.	
134	26-11-34.	Plaintiffs have put in a petition this day with a prayer to fix a date, prior to the date of final of(?) hearing of the application for the appointment of a Receiver. Defendants Nos. 3 and 4 have put in a petition for final of issue No. 5 first. Heard the pleaders of both sides. Prayers are allowed. Put up on 1st December 1934 for hearing of the matters in presence of the pleaders of the parties ...	N. B.	
135	1-12-34.	Plaintiffs have filed one affidavit and some documents. Presid-		

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Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934.

No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).

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In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas.	Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934.			ing Officer is absent on leave. Put up on 3rd December 1934 for orders ...	B. P. B, S. J.-in-charge.	
No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).	136	3-12-34.	Heard pleader for the plaintiffs. Put up on 8th December 1934 for hearing of the matter for the appointment of a Receiver and also issue No. 5. Parties to come ready on that day ...	N. B.	
	*	*	*		*
	139	8-12-34.	When the Counsel for plaintiff was opening the case regarding the Receiver matter defendant's pleader raised a preliminary objection that the plaint must be rejected as plaintiffs have not paid the additional Court-fees as directed by orders Nos. 105 and 106. During the hearing of that objection plaintiffs file a petition for amendment of plaint by deletion of para 18 and prayer (b) in para 21 of the plaint. Defendants file a petition for one week's time to put in written objections. Accordingly time is granted up to 11th December 1934 to the defendants to file their objections and the case is adjourned to 15th December 1934 for hearing of plaintiff's petition for amendment of petition and defendants' objec-		

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1	2	3	4	5
		tion as well as Receiver matter. Inform the pleaders. ...	N. Banerji,	
140	11-12-34.	Defendants Nos. 1(b) and 1(c) have filed this day their petition of objection against plaintiff's petition asking for amendment of the plaint. Put up on the date fixed for hearing ...	N. B.	
*		*	*	*
143	21-12-34.	In this suit for partition plaintiffs make an alternative prayer for a decree for recovery of possession of their $\frac{1}{3}$ share in the disputed properties in case they are held not to be entitled to partition. Upon the report of the stamp inspector the Court by its Order No. 105, dated 10th April 1934 directed the plaintiffs to pay Court-fees on the highest claim by 1st May 1934 in view of their alternative prayer. On 1st May 1934 on both parties petition the suit was adjourned to 14th June 1934. The order No. 106, dated 1st May 1934 is to the effect that the plaintiffs are to pay Court-fees in the meantime and the Court-fee matters be also put up on that day. The last portion of this order apparently refers		

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No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).

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In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas.	Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934. No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).			to the issues Nos. 4 and 5 framed on defendant No. 1's specific objections to the valuation of the suit and Court-fee matter in his written statement. Subsequently several adjournments were granted to either of the parties till 8th December 1934 when the suit was taken up for hearing of the Receiver matter. When the Counsel for plaintiffs was opening the case the learned pleader for defendant No. 1 raised a preliminary objection that the plaint must be rejected under Order 7 Rule 11 Clause (c) of C. P. Code as the plaintiffs have not paid the additional Court-fees as directed by orders Nos. 105 and 106. During the hearing of that objection plaintiffs file a petition for amendment of plaint by deletion(?) of para 18 and the alternative prayer (b) in para 21 of the plaint. Defendants Nos. 1(b) and 1(c) have afterwards filed their written objections. Plaintiff's Counsel and defendants' Advocate are heard at length. It is open to a plaintiff to relinquish a portion of his claim to bring it within a certain Court-fee *vide* A. I. R. 1931 Madras 716. Order 6 Rule 17 of C. P.		

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.	*In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas.* Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934. No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).
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Code gives ample power to the Court to allow either party to alter or amend his pleadings at any stage of the proceedings on such terms as it may deem just. In consideration of the facts (1) that the plaint when filed was not rejected in the first place and the plaintiffs were allowed to proceed with the suit for a considerable length of time in spite of Court's orders Nos. 105 and 106, (2) that it was an alternative prayer (b) for recovery of possession made in para 21 of the plaint, in regard to which the plaintiffs are made liable to pay additional Court-fees and which the plaintiffs are entitled to abandon at their risk by an amendment of the plaint under Order 6 Rule 17 of C. P. Code without any prejudice to the contesting defendants, (3) that the Court in exercise of its power under Section 148 of C. P. Code to enlarge the time fixed by it by orders Nos. 105 and 106 has in fact extended that time by not rejecting the plaint for non-payment of additional Court-fees in compliance with such orders and by allowing the plaintiffs to proceed with the suit and (4) that the

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	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934. No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).			orders Nos. 105 and 106 about payment of additional Court-fees by plaintiffs were made *exparte* in the absence of plaintiffs' pleader without hearing him upon stamp inspector's report it is ordered that plaintiff's petition dated 8th December 1934 for amendment of plaint be allowed on payment of Rs. 8 as cost to the contesting defendants within a fortnight and that orders Nos. 105 and 106 be modified accordingly. Inform the pleaders of both parties ...	N. Banerjee.	
	144	22-12-34.	As the cost allowed to the contesting defendants has been deposited by plaintiffs in Court to-day by Chalan No. 3521 let the plaint be amended as prayed for by plaintiffs according to order No. 144. The Receiver matter is put up on 5th January 1935 for hearing on plaintiff's petition filed to-day. Inform the pleaders of both parties ...	N. Banerjee.	
	145	5-1-35.	Court is engaged in hearing of arguments of T. Suit No. 9 of 1934 and the Receiver matters cannot be taken up to-day. 6th January being a Sunday and 7th and 8th instant being closed holidays, the matter be		

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1	2	3	4	5
		put up on 9th January 1935 for hearing which is also fixed for hearing of the suit ...	N. B.	
146	9-1-35.	Defendant Nos. 1(b) and 1(c) are ready but plaintiff and defendants 1(a) and 1(d) put in petitions asking for time. Heard pleaders for the plaintiff and defendants 1(b) and 1(c). As Court will be engaged in hearing of old T. Suit No. 5 of 1934 which was adjourned on several dates of hearing, this suit cannot be taken up to-day for hearing. As it is given to understand by the pleaders of the parties of T. Suit No 5 of 1934 that the hearing of that suit might take at least 3 weeks time, this suit is to be adjourned to a considerable back date. But as the parties press for the hearing of Receiver matter earlier, it is accordingly adjourned to 12th January 1935 for hearing of that matter on which date the suit will be adjourned for a positive hearing according to the petitions filed by the parties. Pleaders of the parties are asked to move their respective petitions on that day ...	N. B.	
147	12-1-35.	Defendants Nos. 1(a) and 1(d)'s petition dated 9th January 1935 for an adjournment of		

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In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas. — Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934. — No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).	Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
	1	2	3	4	5
			the suit pending the decision of the High Court in the appeal preferred by them is put up to-day in the presence of both parties' pleaders. As the hearing of the suit is not stayed by the High Court the suit as it stands must proceed. The order of the District Judge will be in force until it is set aside or modified in appeal by the High Court. Defendants Nos. 1(a) and 1(d)'s petition is therefore rejected...	N. B.	
	148	12-1-35.	The pleader for added defendants Nos. 1(b) and 1(c) presses their application for discharging their mother from the guardianship of her infant son and heir of deceased Mutwalli Sayedali and for their appointment as guardians for the minor defendants No. 1(d) for the suit. At the verbal request of the pleader for defendant No. 1(a) and 1(d) let it be put up on 19th January 1935 for hearing in the presence of both parties' pleaders. Inform the latter accordingly ...	N. B.	
	149	12-1-35.	Pleaders of both parties are heard on the Receiver matter. As this suit is on the peremptory list and is likely to be heard soon let the matter of appointment of a Receiver		

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		stand over for the present. If the hearing of the suit is unduly delayed under any unforeseen circumstances the applicants may renew their prayer hereafter. Inform their pleader accordingly ...	N. Banerjee.	
150	19-1-35.	The pleader for defendants Nos. 1(b) and 1(c) does not press latters' application for discharging their mother from the guardianship of her infant son defendant No. 1(d) for the suit at this stage. Their petition is therefore rejected. If they like they may renew their prayer hereafter ...	N. B.	
151	19-1-35.	A premptory date of hearing of this suit and its analogus No. 1 of 1934 to be fixed after the conclusion of hearing of T. Suit No. 5 of 1934 which is going on from day to day and is expected to be finished at the end of this month ...	N. B.	
152	27-2-35.	Arguments in T. Suit No. 5 of 1934 is going on, which, as given to understand, by the pleader for the plaintiffs is likely to be finished by 6th March 1935, arguments on behalf of defendant No. 3 being over before. As parties of this suit have expressed their desire for fixing a date		

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In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas. — Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934. — No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).	Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
	1	2	3	4	5
			of hearing with prior 15 days' notice to them so that they might be ready, two smaller suits have been fixed on 7th March 1935 and 12th March 1935 respectively for hearing. This suit and its analogous No. 1 of 1934 are accordingly adjourned to 21st March 1935 for peremptory hearing. Inform the parties concerned through their pleaders who should come ready on the date fixed ...	N. B.	
	*	*	*	*	
	155	21-3-35.	Sm. Nawab Ikkatara Hamidi Begum, the guardian of the minor Mirza Mohammed Wahed All Mutwali put in a petition stating that she accepted the defence filed by Mirza Mohammed Saiyed Ali Mutwali, deceased, on behalf of her minor son and that according to that defence, she may be allowed to proceed with case on behalf of the minor. She is permitted to do so ...	N. B., Sub-Judge.	
	156	21-3-35.	Under order of the District Judge passed in Misc. J. Case No. 249 of 1932, this suit and T. S. No. 1 of 1934 of the Court are analogously tried		

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
		for the sake of convenience. Both parties are ready. Cases are opened partly. It being late to-day. Adjourned till to-morrow for further hearing ...	N. B., Sub-Judge.	
157	22-3-35.	Further hearing resumed to-day. Parties opened their respective cases at length and pleadings of both the cases are readover, opening of the cases has not been concluded. It being late day, adjourned till to-morrow for further hearing.		
		On the application of the defendant let the summons to his witness be issued at his own risk ...	N. B., Sub-Judge.	
	*	* *	*	
159	23-3-35.	Further hearing is resumed. Joint petition of Nawab Saiyed Mohammed Hashim Ali Khan, the plaintiff. No. 1 and of Saiyid Ashiq Hossain, the assignee of the plaintiff No. 1 filed on 21st March 1935 for adding the said assignee Saiyid Ashiq Hossain as co-plaintiff is put up to-day.		
		Plaintiff No. 2 Mahumda Bibi puts in an objection. Heard pleader		

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	1	2	3	4	5
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No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).	160	23-3-35.	Plaintiff Mahmuda Bibi puts in a petition that(*sic*) therein that (1) as to the genuineness and validity of the Wakfnama by which the defendants want to thwart the plaintiffs claim onus is on the defendant in the first instance to prove the same and the plaintiffs may be given liberty to adducing rebutting evidence to disprove the case put forward by defendant (2) That as regards issues Nos. 10 and 16 they practically cover the same matter and therefore this should be recaste and consolidated. (3) as to the issue No. 15 as framed by the Court, on the supposition that plaint was filed by the original plaintiff was duly signed and verified by the original plaintiff and instituted under her knowledge and authority and the substituted plaintiff is estopped for questioning the legality and validity of the plaint but if he wants to raise any		

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		question as to the genuineness therefore the onus is on him to prove affirmatively before further proceedings are taken regarding trial of the suit.		
		Heard pleaders.		
		It is ordered that it is not necessary to recaste and to consolidate the issues Nos. 10 and 16 but they can be taken together, and that as regards the validity and genuineness of the Wakfnama by which the defendants want to thwart the plaintiff, claim onus lies on the defendant in the first instance to prove the validity and genuineness of the Wakfnama and the plaintiff is permitted to adduce rebutting evidence to disprove the case put forward by the defendants ...	N. B., Sub-Judge.	
161	23-3-35.	The defendants Nawab Jahan Ara Jafri Begum and others put in a petition for amendment of issue No. 15, stating therein that the said issue No. 15 has not been correctly framed and that it would be framed as suggested thus :—		
		"Was the plaint properly signed and verified? Was the suit instituted by the original		

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No. 1.
Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).

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	1	2	3	4	5
			plaintiff or under her authority and with her knowledge of the contents thereof"? Heard pleaders on both sides at length. It is ordered that as the onus lies upon the defendant before the allegations made by him in his written statement the issue No. 15 as framed need not be changed. The petition is therefore rejected as groundless ...	N. B., Sub-Judge.	
	*	*	*	*	
	164	23-3-35.	Further hearing is resumed. Further openings of the cases of the parties are heard at length and pleadings and issues are discussed and pleaders of the parties are heard at length.		
			Parties are directed to adduce evidence. Documents put in by the plaintiff Mahmuda Bibi and they are marked Exhibits 1, 2, 2(a), 2(b), 3 and 4 and they are admitted in evidence.		
			For the plaintiff Bhupendra Nath Ghose is examined partly. He proves the receipt which is marked Exhibit 5 and the said receipt admitted in evidence.		
			Adjourned till 25th March 1935 for further hearing. Parties		

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		do come ready with their evidence, on that day and the witnesses in attendance are to attend on that day ...	N. B,	
165	25-3-35.	Further hearing resumed. P. W. 1 further cross-examined this day. Power of Attorney identified by the witness is marked "X" for identification P. W. 2 Uzir Ali and P. W. 3 Ganesh Chandra Dey Solicitors have been examined in part. P. W. 2 proves the Power of Attorney marked Ext. 6. P. W. 3 proves the deed of conveyance marked Ext. 7 and the affidavit sworn by him marked Ext. 8. The promissory notes identified by the witness are marked Y and Y1 for identification. As there is no time this day, put up on 26th March 1935 for further examination and cross-examination of P. Ws. 2 and 3 and for further hearing. Documents filed by plaintiffs 1 and 2 be kept with the record, their admissility or otherwise will be considered at the time of trial. On the application of defendants 3 and 4 send requisition to the Collector of 24-Parganas calling for the records mentioned in the petition. Parties and witnesses present to attend at 11 A. M. to-morrow ...	N. B.	

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	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934.	166	26-3-35.	Further hearing resumed. P. W. 3 further examined and cross-examined. P. W. 2 examined in part. Letter identified by P. W. 3 marked "Z" for identification. The word "Received" and the date in the handwriting of P. W. 3 has been proved and marked Ext. 9. To 27th March 1935 for further examination and cross-examination of P. W. 2 and for further hearing. Parties and witnesses present to attend as usual ...	N. B.	
No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).	167	27-3-35.	Hearing resumed. P. W. 2 further examined and cross-examined in part. He proves the letter addressed to the Solicitor marked Ext. 10 and the Patta marked Ext. 11 subject to objections by plaintiffs 1 and 1(a). Let the petition, filed by plaintiff No. 2, asking for leave to examine P. W. 2 again with a view to adduce rebutting evideace regarding the alleged Wakf be kept for necessary orders in time. To 28th March 1935 for further cross-examination of P. W. 2 and for further hearing. Parties and witnesses present to attend as usual ...	N. B.	
	168	28-3-35.	Hearing resumed. P. W. 2 further cross-examined in part		

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		this day. To 29th March 1935 for further cross-examination of P. W. 2 and for further hearing. Parties and witnesses to attend as usual. Document filed by plaintiff No. 2 be kept with the record, its admissibility or otherwise will be considered at the time of hearing. On the petition of the plaintiffs Nos. 1 and 1(a) they are permitted to cross-examine the witnesses of substituted plaintiffs, before their cross-examination by defendants and not after it ...	N. B.	
169	29-3-35.	Hearing resumed. P. W. 2 further cross-examined in part. Deposition of the witness given in M. S. No. 89 of 1930 tendered and Ext. A and judgment of that suit tendered and marked Ext. B. Signatures and seal marks of the witness in the written statement and Vakalatnama filed by Juhi Begum in M. S. No. 89 of 1930 shown to the witness who admits them and marked Exts. C to C4. The signatures on the receipts shown to the witness and marked Exts. D to D2 on admission. Receipts bearing the seal marks of Amir Begum, shown to the witness and marked Exts. E to E10		

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1	2		3	4	5
Title Suit No. 17 of 1931 38 of 1932 112 of 1932 2 of 1934. No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).			respectively. Kabuliat, bearing the signatures of the witnesses and marked Exts. F to F3 respectively on admission. To 2nd April 1935 for further cross-examination of P. W. 2 and for further hearing. Parties and witnesses to attend as usual on that date ...	N. B.	
	170	2-4-35.	Hearing resumed. P. W. 2 further cross-examined. P. W. 4 Babu Satis Chandra Ghose, Advocate has been examined. Copy of deposition of P. W. 2 in T. S. No. 120 of 1930 tendered on behalf of defendants 3 and 4 and marked Ext. A1. Receipt tendered and shown to P. W. 4 and marked Ext. 5(a) on admission. Entry in the deed of assignment marked Ext. 12, deed of assignment Ext. 12(a) and signature on the assignment marked Ext. 12(b). Endorsement on letters marked Ext. 10(a). Endorsements on the hand-notes are marked Exts. 13, 13(a) and 13(b) respectively. Letters is(*sic*) marked "Z1" for identification. Copy of plaint tendered on behalf of plaintiff No. 2 and is marked Ext. 14. Put up on 3rd April 1935 for further hearing. Parties and witnesses to attend as usual ...	N. B.	

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.	In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas.
1	2	3	4	5	
171	3-4-35.	Hearing resumed. P. W. 5 Kiran Chandra Neogi has been examined this day. The Schedule Book of creditors produced by the witness tendered on behalf of plaintiff No. 2 and the entries thereon are marked Exts. 15 and 15(a) certificate of Official Assignee tendered and marked Ext. 16 and the entry in the sale book produced by P. W. 5, proved and marked Ext. 17 on plaintiffs petition the witness is recalled and further examined and cross-examined. Copy of the schedule book tendered on behalf of defendants Nos. 3 and 4 shown to the witness and marked Ext. Y. As there is no time this day to 4th April 1935 for further hearing. Parties and witnesses to attend as usual. Documents filed by plaintiff No. 2 be kept. Their admissibility or otherwise will be considered at the time of hearing ...	N. B.		Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934. No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).
172	4-4-35.	Further hearing resumed. P. W. 6 Hira Lal Das Solicitor has been examined. Copy of deposition tendered on behalf of plaintiffs 1 and 1(a) is marked Ext. I. Copy of plaint tendered on behalf of defen-			

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In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas. / Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934. / No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).	Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
	1	2	3	4	5
			dants 3 and 4 is marked Ext. H. On plaintiffs petition the witness is recalled and further examined in part. Plaintiff No. 2 files some documents at this stage and intends them to use in evidence by this witness.		
			Counsels for the plaintiffs Nos. 1 and 1(a) and defendants 3 and 4 object to the putting in of documents filed by plaintiff No. 2 so late. The admissibility or otherwise of the documents filed by plaintiff No. 2 will be considered on her showing cause of delay in filing them within a day. Defendants 3 and 4 puts in a petition supported by an affidavit, with a medical certificate attached thereto, asking for examination of a witness on commission, on the ground of his being ill. Heard pleaders of the respective parties. Plaintiff No. 2 objects to the prayers she is directed to file a counter-affidavit within a day, whereupon the matter will be considered. To 5th April 1935 for further examination of P. W. 6 and for further hearing. Parties and witnesses to attend as usual ...	N. B.	

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
173	5-4-35.	Yesterday at the last hour plaintiff No. 2 put in a petition, supported by an affidavit, showing cause of delay in producing the documents (Requisition of title and draft Deed of Assignment) substituted plaintiffs 1 and 1(a) objected before-hand as to their being used in evidence and to-day they filed a petition for a direction to produce the deponent of the alleged affidavit in Court and for permission to cross-examine him. Heard the Counsels of the parties at length, on the point and the prayer of the substituted plaintiffs 1 and 1(a) is allowed. Deponent of the affidavit Kasim Hossain Nanavoiti has been cross-examined in part to-day. Court being closed at 2 P. M. under orders of the District Judge, in memory of the death of a senior pleader of the Bar, adjourned till to-morrow for further examination of P. Ws. 6 and 7 and for further hearing. Parties and witnesses to attend as usual. Plaintiff No. 2 is directed to file the counter-affidavits by to-morrow positively, as referred to in order No. 172, dated 4th April 1935 ...	N. B.	

In the 3rd Court
2nd Addl. Court
4th Court
3rd Addl. Court of the Subordinate Judge, 24-Parganas.

Title
Suit No.
17 of 1931
38 of 1932
112 of 1932
2 of 1934.

No. 1.
Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).

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In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas.	Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934. No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).	174	6-4-35.	Plaintiff No. 2 files an affidavit explaining the cause of delay in production of the draft of the deed of assignment. The Counsel for plaintiffs Nos. 1 and 1(a) objects. His prayer for cross-examination of the deponent in respect of the affidavit is granted. Kasim Hossain Nanavoiti is examined and cross-examined at length. From his evidence coupled with the affidavit it is clear that the draft in question was not in custody of plaintiff No. 2 or her pleader till day before yesterday. So the explanation of the cause of delay in production of the draft is accepted. As the draft bears the signature of Babu Satis Chandra Ghose Vakil for defendants Nos. 3 and 4 as an attesting witness and as there is nothing in it to question its genuineness which is disputed by the counsel for plaintiffs Nos. 1 and 1(a) the draft is admitted in evidence and is marked Ext. 18 on plaintiff No. 2's side, subject to objection of plaintiffs Nos. 1 and 1(a) defendants Nos. 4 and 3 ...	N. B.	
	175	6-4-35.	Both the affidavit in support of the petition filed by defendants Nos. 3 and 4 for examination		

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
		of their witness Serajul Ullama Mirza Altaf Hossain *alias* Mufti Saheb on commission and the counter-affidavit in support of the objection of plaintiff No. 2 are considered. Pleaders of plaintiffs Nos. 1 to 2 and defendants 3 and 4 and Counsel for plaintiff Nos. 1 and 1(a) are heard. It appears that the medical certificate filed by defendants Nos. 3 and 4 in support of the illness of the same witness in 1933 was disbelieved by the High Court on the report of the Civil Surgeon. As the evidence of the witness as an attesting witness to the Wakfnama is important it is ordered in view of the circumstances stated by both parties that the petitioners defendants Nos. 3 and 4 must produce the Civil Surgeon's certificate about the present condition of health of the witness in question within 3 days. On its filing their petition will be considered. Inform the parties ...	N. Banerji.	
176	6-4-35.	Plaintiff No. 2 puts in a petition asking for a direction upon defendants Nos. 3 and 4 to give timely notice of the date and time of examination of their witnesses by the Civil Surgeon on the pleaders of		

In the 3rd Court
2nd Addl. Court
4th Court
3rd Addl. Court of the Subordinate Judge, 24-Parganas.

Title
Suit No.
17 of 1931
38 of 1932
112 of 1932
2 of 1934.

No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).

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In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas.	Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934. No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).			the parties. Heard pleaders. The prayer is allowed. The pleader for defendants 3 and 4 must give timely notice of the date, time and place of examination of their witness by the Civil Surgeon on the pleaders of plaintiffs Nos. 1 and 1(a) and plaintiff No. 2 ...	N. B.	
	177	6-4-35.	Plaintiff No. 2 puts in another petition to recall and examine Babu Satish Chandra Ghosh Advocate in respect of some documents. Put up on Monday the 8th April for orders...	N. B.	
	178	6-4-35.	Further hearing resumed. P. W. 7 has been cross-examined in full to-day. In view of the order No. 174, dated 6th April 1935 P. W. 6 further examined and cross-examined. The draft assignment and the requisition of title tendered on behalf of plaintiff No. 2 shown to the witness and marked Exts. 18 and 19 respectively subject to objection by the counsels of plaintiffs 1 and 1(a) and defendants Nos. 3 and 4. P. W. 8 Mangal Das Gobardhan Das Mehta has been examined in part to-day. The endorsement on the back of the hand-notes placed and marked Exts. 13(c) and 13(d) res-		

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
		pectively. Put up on 8th April 1935 for further cross-examination of P. W. 8 and for further hearing. Parties and witnesses to attend as usual ...	N. B.	
179	8-4-35.	As Babu Satis Chandra Ghosh Vakil for defendants Nos. 3 and 4 admits the endorsements on the draft of deed of assignment Ext. 18 and the requisition Ext. 19 to be in his hand-writing and the signatures thereon to be his plaintiff No. 2 does not form her petition dated 6th April 1935 for recalling him for further examination. It is therefore rejected ...	N. Banerjee.	
180	8-4-35.	Plaintiff No. 2 files a general power of attorney executed by late Juhi Begum and a postal acknowledgment receipt of an insured articles alleged to have been granted by her, praying for these documents being used as evidence on her side without proof—counsel for plaintiffs Nos. 1 and 1(a) objects. He and plaintiff No. 2's pleader are heard at length. It appears from the endorsement on the back of the power of attorney that the District Registrar has authenticated		

In the 3rd Court
2nd Addl. Court
4th Court
3rd Addl. Court of the Subordinate Judge, 24-Parganas.

Title
Suit No.
17 of 1931
38 of 1932
112 of 1932
2 of 1934.

No. 1.
Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).

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In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas.	Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934. No. I. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).			the document after being satisfied on the examination of the executrix Juhi Begum that it has been voluntarily executed by her, according to Section 33 of Indian Registration Act. There is nothing in it to show that the document was not executed in his presence or that it was re-executed before him although it was executed before his arrival at the residence of lady. Under Section 33 Clause (2) of the Act, the Registrar is to attest the execution of the power of attorney when he is satisfied that it has been voluntarily executed by the person. As the Registrar says in his endorsement that he has authenticated the document according to Section 33 of I. R. Act he must be deemed to have done the official act that was necessary under the provisions of that Act. I therefore allow the power of attorney to be marked Ext. 20 subject to plaintiffs 1 and 1(a)'s objection. As regards the postal acknowledgment receipt it is marked Ext. 21 subject to their objection to show that the insured articles to which it relates was posted and reached its destination		

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
		in regular course of postal business ...	N. Banerjee.	
181	8-4-35.	Plaintiff No. 2's petition for examination of a witness at Rangoon on commission at this stage of the case is rejected as groundless ...	N. Banerjee.	
182	8-4-35.	Hearing resumed. P. W. 8 further cross-examined this day. General Powers of Attorney and Postal acknowledgment receipt tendered on behalf of plaintiff No. 2 marked Exts. 20 and 21 respectively subject to objection by plaintiffs 1 and 1(a). P. W. 9 Syed Md. Hasem Ali Khan (plaintiff No. 1) has been examined in part this day. To 9th April 1935 for further examination of P. W. 9 and for further hearing. Parties and their witnesses to attend as usual. Let summons upon the witness of plaintiffs 1 and 1(a) be issued at their risk, as asked for ...	N. Banerjee.	
183	9-4-35.	Hearing resumed. P. W. 9 has been further examined this day in part. Copy of the order of the Sub-Divisional Officer, Lucknow and copy of the report of the Naib Tahasildar, and copy of the register tendered on behalf of plaintiffs		

In the 3rd Court
2nd Addl. Court
4th Court
3rd Addl. Court of the Subordinate Judge, 24-Parganas.

Title
Suit No. 17 of 1931
38 of 1932
112 of 1932
2 of 1934.

No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).

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In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas.	Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934. No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).			1 and 1(a) of suit No. 2 of 1934 and marked Exts. II, III and IV respectively. To 10th April 1935 for cross-examination of P. W. 9 and for further hearing. Let summons upon the witness of defendants 3 and 4 be issued, at their risk, as asked for. Parties and witnesses to attend as usual ...	N. B.	
	184	10-4-35.	Further hearing resumed. P. W. 9 further examined and cross-examined in part to-day. To 11th April 1935 for further cross-examination of P. W. 9 and for further hearing. Parties and witnesses to attend as usual ...	N. B.	
	*	*	*		*
	186	11-4-35.	Hearing resumed. P. W. 9 further cross-examined in part to-day. Letters and their covers tendered on behalf of the plaintiff No. 2 marked Exts. *Z2–Z4* for identification. Monogram on the back of the cover shown to the witness who admits the same and marked Ext. Z5 for identification. Writings and addresses on the covers, both in English and Urdu character, which the witness admits to be his hand-writing are proved and marked Exts. 22-22(d) res-		

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.	*In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas.* Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934. No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).
1	2	3	4	5	
		pectively. To 12th April 1935 for further cross-examination of P. W. 9 and for further hearing. On the petition of plaintiffs 1 and 1(a) let a letter of request be sent to the Official Assignee to send the documents referred(*sic*) by them, through a clerk of his office, by 16th April 1935. Parties and witnesses to appear as usual ...	N. B.		
187	12-4-35.	Hearing resumed. P. W. 9 further cross-examined in part to-day. To 16th April 1935 for further cross-examination of P. W. 9 and for further hearing ...	N. B.		
188	16-4-35.	Hearing resumed. P. W. 9 has been further cross-examined in part. Cover and the letter tendered on behalf of defendants Nos. 3 and 4 and admitted by P. W. 9 to be in his own hand-writing, have been marked Exts. I and J respectively. To 17th April 1935 for further cross examination of P. W. 9 and for further hearing. Parties and witnesses to attend as usual...	N. B.		
189	17-4-35.	Further hearing resumed. P. W. 9 further cross-examined this day. P. W. 10 Syed Kasim Shalijee has been examined			

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In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas.	Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934.			in part. To 18th April 1935 for further examination and cross-examination of P. W. 10 and for further hearing. Parties and witnesses to attend as usual ...	N. B.	
No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).	190	18-4-35.	Hearing resumed. P. W. 10 further examined and cross-examined in part. P. W. 11 Kanai Lal Mitra, a clerk of the Official Assignee has been examined. As there is no time to-day, put up on 23rd April 1935 for further cross-examination of P. W. 10 and for further hearing. Parties and witnesses to attend as usual. On the petition of defendants Nos. 3 and 4 let summons upon their witness be issued at their risk as asked for ...	N. B.	
	191	23-4-35.	Hearing resumed. P. W. No. 10 has been further cross-examined. On the petition of plaintiffs 1 and 1(a) P. W. 10 has been re-called and further examined and cross-examined. P. W. 10 proves the entries in the Cash Books marked Exts. V to V(k) respectively, and entries in the Nondh(*sic*) Book marked Ext. V1. Plaintiff No. 2 tendered the cash books of the year 1918 and some entries shown to		

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
		P. W. 10 and marked Exts. 23-23(d) respectively and Ledger Books of the years 1918 and 1919, shown to the witness and marked Exts. 24-24(b) respectively. Copy of judgment of S. C. C. Suit No. 24685 of 1931 of the Calcutta Small Cause Court tendered on behalf of plaintiff No. 2 and marked Ext. 4(a). As there is no time this day, adjourned to 24th April 1935 for further hearing. Parties and witnesses to attend as usual. Petitions of defendants 3 and 4 and of substituted defendant asking for summons upon several witnesses at this stage be put up for necessary orders in presence of their pleaders ...	N. B.	
192	24-4-35.	Defendants' petition for summons are put up this day. Heard pleaders. Defendants' prayer for summons upon their witnesses at this stage of the case, are rejected as groundless. Hearing resumed, D. W. 1 Wahed Ali Khan, D. W. 2 Asrafuddin Khan have been examined in full. D. W. 3 Shahasha Bakt Israil Ali Mirza Bahadur has been examined in part. D. W. 1 proves Kabuliyat marked Ext. K and the Money Order Receipts		

In the 3rd Court
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No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).

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In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas.	Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934. No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).			marked Exts. L-L2 respectively. D. W. 3 proves the letters marked Exts J1–J5 respectively and the statement marked Ext. M. As there is no time this day, adjourned to 25th April 1935 for further cross examination of D. W. 3 and for further hearing. Documents filed by the defendants 3 and 4 this day, be kept with the record, their admissibility or otherwise will be considered, at the time of trial. Parties and witnesses to attend as usual...	N. B.	
	193	25-4-35.	Hearing resumed. D. W. 3 has been examined in full. D. W. 2 has been re-called and further examined and cross-examined. Notes and seal on the margin of the letters have been proved and marked Exts. J6 to J8 respectively. Orders on the back of the letters have been proved and marked Exts. J9 and J10. D. W. 4 Haji Meheruddin has been examined in full. He proves the rent-receipts marked Exts. N-N9 respectively. To 26th April 1935 for further hearing. Parties and witnesses to attend as usual ...	N. B.	
	194	26-4-35.	Further hearing resumed. D. W. 5 Jafar Hossain has been		

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
		examined D. W. 6 Hari Santosh Chatterjee, a clerk of Calcutta Corporation has been examined and cross-examined in part. He proves the entries in the assessment register marked Exts. O to O34 and the assessment bills marked Exts. P-P44 respectively. As their is no time to-day. Adjourned to 27th April 1935 for further hearing. Parties and witnesses to attend as usual ...	N. B.	
195	27-4-35.	Hearing resumed. D. W. 6 has been further cross-examined. D. W. 7 Md. Eusuf has been examined in full. D. W. 8 Munshi Makbul Hossain has been examined in part. He proves the rent-receipts marked Exts. N10-N41 respectively. At this stage when it is nearly 2 P. M. parties put in a joint petition to adjourn the hearing after 2 P. M. on the ground set forth therein. The suit is accordingly adjourned to 29th April 1935 for further hearing.	N. B.	
196	29-4-35.	Further hearing resumed. D. W. 8 has been further cross-examined. D. W. 9 Prince Ishaque Ali Mirza has been examined in part. He proves the signatures on the Wakfnama marked Exts. Q-		

In the 3rd Court
2nd Addl. Court
4th Court
3rd Addl. Court of the Subordinate Judge, 24-Parganas.

Title
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38 of 1932
112 of 1932
2 of 1934.

No. 1.
Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935.
(Extracts).

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In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas.	Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934.			Q25 respectively and the Wakfnama marked Ext. R. As there is no time to-day adjourned to 30th April 1935 for further cross-examination of D. W. 9 and for further hearing. Parties and witnesses to attend as usual ...	N. B.	
No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).	196	30-4-35.	Hearing resumed. D. W. 9 examined in full. D. W. 10 Prince Sabduaraza Bahadur has been examined in part. Signature on the Wakfnama proved and marked Ext. Q26. To 1st May 1935 for further cross-examination of D. W. 10 and for further hearing. Parties and witnesses to attend as usual ...	N. B.	
	197	1-5-35.	Further hearing resumed. D. W. 10 has been examined in full. D. W. 11 Suleman Khan has been examined in part. He proves the rent receipts marked Exts. N42-N49 respectively. As consented to by the learned Counsels of the parties, and on the prayers of defendants 3 and 4, the rent-receipts Ext. No. 14 is to be used in evidence against the plaintiffs only and not against the son of Sayedali. To 2nd May 1935 for further examination of D. W. 11 and for further hearing ...	N. B.	

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
198	2-5-35.	Hearing resumed D. W. 11 has been further cross-examined D. W. 12 Sudhanshu Bhusan Mukherjee, 13 Maulvi Sundar Ali, 14 Pramatha Nath Paul, 15 Abdul Barik and 16 Habibur Rahaman have been examined this day. D. W. 12 proves the Kabuliat Ext. K1 and Patta Ext. S and the rent-receipts marked Exts. N50-N52, D. W. 13 proves the Kabuliat Ext. K2 and the rent-receipts marked Exts. N53-N60 respectively. D. W. 14 proves the rent-receipts marked Exts. N61-N62. To 3rd May 1935 for further hearing as defendants, have got no other witness this day. Parties and witnesses to attend as usual ...	N. B.	
199	3-5-35.	Hearing resumed. D. W. 17 Mirza Md. Abedali, 18. Abdul Karim have been examined in full. D. W. 19 Md. Kazim Shirazi has been examined in part. P. W. 17 proves the signature on the Wakfnama marked Ext. Q27. As there is no time to-day put up on 4th May 1935 for further cross-examination of D. W. 19 and for further hearing. Parties and witnesses to attend as usual. ...	N. B.	

In the 3rd Court
2nd Addl. Court
4th Court
3rd Addl. Court of the Subordinate Judge, 24-Parganas.

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112 of 1932
2 of 1934.

No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).

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In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas.	Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934. — No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).	200	4-5-35.	Further hearing resumed. D. W. 19 has been further cross-examined. D. W. 20 Panchanan Mazumdar, D. W. 21 Akbarali have been examined in full. D. W. 22 Munsudulla has been examined in part. D. W. 20 proves the leases marked T and T1 and rent-receipts marked Exts. N63–N68 respectively. Receipts Exts. N67 and N68 are not to be used in evidence against son of Syed Ali. D. W. 21 proves the rent receipts marked Exts. N69-N71 respectively. As there is no time this day adjourned to 8th May 1935 for further cross-examination of D. W. 22 and for further hearing. Parties and witnesses to attend as usual ...	N. B.	
	201	8-5-35.	Hearing resumed. D. W. 22 has been further cross-examined. D. W. 23 Makram Ali Munshi has been examined in part. The latter proves the cash Books marked Exts. U–U3, Dakhilas marked Exts V–V10, counterfoils of taxes marked Exts. W–W2, rent-receipts Exts. N72–N84 and Kabuliats marked Exts K3–K7 respectively. At this stage plaintiffs 1 and 1(a) put in a petition for further cross-examination of D. W. 22 on being		

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
		re-called. Heard advocates. The prayer is allowed. The witness will be re-called day after to-morrow for further cross-examination for one hour only. Inform the parties on the petition of defendants 3 and 4, send requisitions for the records asked for at their risk. As there is no time this day, adjourned to 9th May 1935 for further hearing. Parties and witnesses to attend as usual ...	N. B.	
202	9-5-35.	Further hearing resumed. D. W. 23 has been further examined and cross-examined. The witness further proves the Kabuliats marked Exts. K8 to K22 respectively. Rent-receipts Ext. N85 and entries on the receipts marked Exts. N85 to N88 respectively. Copies of judgment tendered on behalf of the defendants 3 and 4 are marked Exts. B1 to B4, copies of decrees marked Exts. N to N6 and medical certificate marked Ext. Z. Copies of depositions tendered on behalf of the plaintiff No. 2 are marked Exts. 25 and 25(a) and copies of judgments marked Exts. 4(b) and 4(c) respectively. At this stage defendants Nos. 3 and 4 put in a petition re calling the wit-		

In the 3rd Court
~~*2nd Addl. Court*~~
~~*4th Court*~~
3rd Addl. Court of the Subordinate Judge, 24-Parganas.

Title
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~~38 of 1932~~
~~112 of 1932~~
~~2 of 1934.~~

No. 1.
Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).

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In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas.	Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
	1	2	3	4	5
Title Suit No. 17 of 1931 / 33 of 1932 / 112 of 1932 / 2 of 1934.			ness, who is further examined and proves the cash-book marked Exts. N4 and the Dakhilas marked Exts. V11 to V12. To 10th June 1935 for further examination of D. W. 23 and for further hearing ...	N. B.	
No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).	203	10-5-35.	Further hearing resumed. D. W. 22 having been re-called by plaintiffs 1 and 1(a) further cross-examined this day. D. W. 23, being re-called, further examined and cross-examined. He further proves the cash-book marked Ext. N5 and Dakhilas marked Exts. V13 to V16 respectively. Copy of summons and plaint tendered on behalf of plaintiffs 1 and 1(a) are marked Exts. VII and VIII respectively. D. W. 24 Syed Md. Jafar Shiraji has been examined in part this day. As there is no time to-day adjourned to 11th May 1935 for further hearing. Parties and witnesses to attend as usual...	N. B.	
	204	11-5-35.	Hearing resumed. D. W. 24 has been further examined and cross-examined in part. The witness proves the receipts marked Exts. C11 to C21 and D3 to D7 respectively. Medical certificate marked Ext. "Z" has been proved. On the peti-		

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
		tion of defendants 3 and 4 let summons upon their witnesses be issued at their sole risk, as asked for. Put up on 13th May 1935 for further hearing. Parties and witnesses to attend as usual ...	N. B.	
205	13-5-35.	Further hearing resumed. D. W. 24 has been further cross-examined. As there is no time this day, adjourned to 14th May 1935 for further hearing. Parties and witnesses to attend as usual ...	N. B.	
206	14-5-35.	Hearing resumed D. W. 24 being recalled, has been further examined. He further proves the medical certificate marked Ext. Z1 and the signatures on the affidavit marked Exts. BB to BB2 respectively D. W. 25 Md. Rahaman has been examined this day. He proves the Vakalatnama marked Ext. Z and endorsement on its back marked Ext. Z1 and the written statement marked Ext. AA. D. W. 26 Syed Mohammed Ali has been examined in part and his further examination is postponed as the translations of the documents, in Urdu character, which have been used in evidence in this suit, are not prepared as stated ...		

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No. 1.
Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).

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In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas.	Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934. No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).			by the defendants. English translation of the Wakfnama is marked Ext R1 and the Kabuliat Ext. K23. English translations of the statement Ext. M is marked Ext. M1 and the receipts Ext. C20 and Ext. D3 are marked Ext. C22 and D8 respectively. D. W. 27 Sayed Ali Waiz has been examined and cross-examined in part. To 15th May 1935 for further examination of D. W. 26 and D. W. 27 and for further hearing. On the petition of the substituted plaintiffs send requisition for the record, as asked for at their risk. Parties and witnesses to attend as usual ...	N. B.	
	207	15-5-35.	Further hearing rssumed. D. W. 26 and 27 have been further examined and cross-examined. English translation of the letter Ext. J made by D. W. 26 is marked Ext. J11 and English translations of the receipts Ext. D series and E series are marked Exts. D9-D12 and C23(*sic*) to C32(*sic*) respectively. D. W. 28 Braja Gopal Goswami and D. W. 29 Kaywanga have been examined this day. D. W. 28 proves the lease marked Ext. T2 and the signatures on the affidavit Exts. BB3 and BB4		

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
		and the affidavit itself marked Ext. CC. D. W. 29 proves the signature on the affidavit marked Ext. BB5. As there is no time to-day adjourned to 16th May 1935 for further hearing. Parties and witness to attend as usual. Let summons upon defendants' witnesses be issued at their risk, as asked for ...	N. B.	
208	16-5-35.	Hearing resumed. D. W. 30 Soshi Sekhar Banerjee, 31 Mohammad Abbas and D. W. 32 Hiralal Mondal have been examined. D. W. 23 has been recalled and further examined. D. W. 30 proves the translation of draft deed of Wakfnama marked Ext. DD, signature in the written statement Ext. C5 and endorsement on the back of the Vakalatnama marked Ext. C6 and proved by D. W. 32. Plaintiff No. 2 tenders the written statement, and the endorsement on the back of the Vakalatnama which are shown to D. W. 32 and marked Exts. 26 and 26(a) respectively. Plaintiffs 1 and 1(a) tender the signature on the copy of plaint Ext. VIII and shown to D. W. 32 and marked Ext. VIII(a). D. W. 23 further proves the written statement which is marked		

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In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas.	Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934. No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).			Ext. EE(*sic*). At this stage defendants 3 and 4 put in a petition stating that one of their witness is ill and he cannot be produced and ask for time till to-morrow to produce him. Pleaders and advocates on the other sides do not object and defendants 3 and 4 are allowed time till to-morrow to bring the witness mentioned at 11 A.M. Defendants 3 and 4 tenders some copies of depositions, judgments, letters and orders which are marked Exts. A2, B5 to B7, J12 and J13 and Exts. FF to FF12 respectively on the petition of defendants Nos 3 and 4 the suit is adjourned to 17th May 1935 for further hearing. Parties and witnesses to attend as usual ...	N. B.	
	209	17-5-35.	Further hearing resumed. Defendant No. 1 examined one Kazim Hushen Beg. Pleader for defendants 3 and 4 states that they have got no other witness to present this day to be examined. Evidence for the defence closed. Plaintiff No. 2 examined. P. W. 12 Rajat Chandra Sen who proves the medical certificate marked Exts. 27 to 27(c) respestively. P. W. 13 Abdul Quam has been examined in		

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
		part to-day as there is no time, adjourned to 18th May 1935 for further examination of P. W. 13 and for further hearing. Parties and witnesses to attend as usual. Documents filed by plaintiffs 1 and 1(a) be kept with the record, their admissibility, or otherwise will be considered at the time of hearing. The petition of defendant No. 1, recalling two of the witnesses of defendants 3 and 4 for cross-examination is rejected, as the petitioner's pleader did not exercise his option to cross examine the witnesses before their discharge. The petitioners of defendants 3 and 4, to admit in evidence the deposition of Sirajul Ullama Mirza Altab Hushen, one of their witnesses, taken on commission and to expunge the copy of plaint, produced by plaintiffs 1 and 1(a) from the list of exhibits, be put up for orders in presence of parties pleaders and advocates. Evidence for the defence closed ...	N. B.	
210	18-5-35.	Hearing resumed. P. W. 13 has been further examined and cross-examined. P. W. 14 Jogesh Chandra Ray Chaudhury Pleader has been examined. He proves the written		

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In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas. / Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934. / No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).	Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
	1	2	3	4	5
			statement marked Ext. 28, endorsement on the back of the Vakalatnama marked Ext. 26(b) and the Vakalatnama marked Ext. 26(c) respectively. The petition of plaintiffs 1 and 1(a) for summons upon new witnesses at this stage after the closing of defendants' evidence is rejected. Defendants petitions filed yesterday are put up this day in presence of parties pleaders. Heard pleaders. The defendants petition to use in evidence the deposition of the witnesses mentioned, on commission be put up on Monday next after plaintiffs 1 and 1(a) file their objection supported by an affidavit. As regards defendants petition, to expunge a document used by plaintiffs 1 and 1(a) in evidence, be put up for orders after plaintiffs 1 and 1(a) adduce additional evidence. Plaintiffs 1 and 1(a) file another petition renewing their prayers for summons upon some of their witnesses cited. Heard Advocates at length on that point. Their prayer is allowed at their risk regarding issues Nos. 18 and 19 provided that no adjournment is sought. Documents tendered on behalf of plaintiff No. 2 are marked		

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
		Exts. 14(a) and 14(b) (plaints), copy of decree marked Ext. 1(a), depositions 29 and 29(a), orders 2(c), 2(d), Dakhilas Exts. 30 and 30(a) and Corporation bill marked Ext. 31 respectively. Evidence for plaintiff No. 2 closed. To 20th May 1935 for further hearing. Parties and witnesses to attend as usual ...	N. B.	
211	20-5-35.	Further hearing resumed. On the petition of the plaintiffs 1 and 1(a) D. Ws. 15 Jitendra Kumar Choudhury pleader, 16. Bimal Chandra Ganguly pleader and 17. Satya Ranjan Sinha pleader have been examined. P. W. 15 proves the petition marked Ext. IX and powers marked Ext. X. P. W. 16 proves the endorsement on the back of the Vakalatnama marked Ext. X(a) and P. W. 17 proves the copy of letter marked Ext. XI and postal acknowledgment which is marked Ext. XII. Petition filed by defendants Nos. 3 and 4 supported by an affidavit dated 17th May 1935 for admissibility of deposition of a witness in a previous suit as evideuce in those suits and plaintiff No. 2's objection supported by a counter-affidavit are considered in the presence		

In the 3rd Court
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	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934. No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).			of both parties pleaders and counsels. As plaintiff No. 2 was not a party to the previous suit and as no ground is made out to show that the plaintiffs in either suit have kept the witness out of the way as alleged by defendants Nos. 3 and 4 the requirements of Section 33 of Indian Evidence Act are not complied with defendants Nos. 3 and 4's petition is therefore rejected as groundless. Let the documents (Registers) tendered on behalf of defendants 3 and 4 be marked Ext. GG-GG8 respectively. Counsels for plaintiffs 1 and 1(a) states that he has got no more witnesses to be examined. Case closed. Arguments by the advocate for defendants 3 and 4 heard in part to-day. To 21st May 1935 for hearing of further arguments ...	N. B.	
	212	21-5-35.	Further arguments by the counsel for the defendants 3 and 4 heard in part. To 22nd May 1935 for hearing of further arguments ...	N. B.	
	213	21(?)-5-35.	Defendants 3 and 4 have filed this day the full copy of the deposition of Prince Kamar Kader and ask it to be used in evidence. Defendants' peti-		

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
		tion is supported by an affidavit. The copy of the deposition be shown to the counsel of the other sides and if they have no objection, it may be marked as Exhibit ...	N. B.	
214	22-5-35.	Further arguments by the counsels of defendants 3 and 4 heard in part. To 23rd May 1935 for hearing of further arguments ...	N. B.	
215	23-5-35.	Further arguments heard in part by the counsels for defendants 3 and 4. To 24th May 1935 for hearing of further arguments. Plaintiffs to state by to-morrow whether they have any objection to the copy of deposition filed by defendants 3 and 4, being marked as exhibit in this case ...	N. B.	
216	24-5-35.	Further arguments on behalf of the defendants heard. Let the copy of plaint tendered in evidence by the aforesaid defendants be marked Exhibit H1. Heard pleaders regarding the admission of copy of deposition tendered on behalf of defendants and the copy be marked Ext. A3, subject to objection. Arguments on behalf of the defendants closed, their petition for allowing		

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No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).

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In the 3rd Court / 2nd Addl. Court / 4th Court / 3rd Addl. Court of the Subordinate Judge, 24-Parganas.	Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
	1	2	3	4	5
Title Suit No. 17 of 1931 / 38 of 1932 / 112 of 1932 / 2 of 1934.			them to argue further if time permits, be kept with the record. Arguments by the learned counsels for defendant 2(a) in T. S. No. 1 of 1934 heard in part. To 25th May 1935 for hearing of further arguments ...	N. B.	
No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).	217	25-5-35.	Further arguments of the learned counsels for defendant No. 2(a) heard in part. Copy of affidavit tendered on behalf of the plaintiffs 1 and 1(a) is marked Ext. XIII copy of W. S. filed by the plaintiffs 1 and 1(a) showing the fact that it was prepared and not filed is tendered and marked Ext. XIV subject to objection by the pleaders for plaintiff No. 2. To 27th May 1935 for hearing of further arguments ...	N. B.	
	218	27-5-35.	Further arguments by the learned counsel for defendant No. 2(a) in T. S. No. 1 of 1934 heard in part. At this stage plaintiff No. 2 files some documents and prays for their admission in evidence. The petition is objected to by all other parties. The documents filed at this last stage after the close of arguments of defendants 3 and 4 cannot be admitted in evidence. So		

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
		the petition is rejected. Documents filed by the plaintiffs 1 and 1(a) be kept with the record. To 28th May 1935 for hearing of further arguments.	N. B.	
219	28-5-35.	Further arguments by the learned counsels for defendant No. 2(a) of T. S. No. 1 of 1934 and plaintiffs Nos. 1 and 1(a) of T. S. No. 2 of 1934 heard in part. To 29th May 1935 for hearing of further arguments. Documents filed by plaintiffs 1 and 1(a) of T. S. No. 2 of 1934 be kept with the record ...	N. B.	
220	29-5-35.	Further arguments by the learned counsel for plaintiffs Nos. 1 and 1(a) heard in part. To 30th May 1935 for hearing of further arguments ...	N. B.	
221	30-5-35.	Further arguments by the learned counsel for plaintiffs Nos. 1 and 1(a) heard in full. Arguments for plaintiffs 1 and 1(a) in T. S. No. 2 of 1934 and defendant No. 2(a) of T. S. No. 1 of 1934 closed. Arguments by the learned counsels for added plaintiff No. 2 in T. S. No 2 of 1934 and plaintiff of T. S. No. 1 of 1934 heard in part. To 31st May 1935 for hearing of further arguments ...	N. B.	

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	1	2	3	4	5
Title Suit No. 17 of 1931 38 of 1932 112 of 1932 2 of 1934. No. 1. Order-sheet, dated from the 30th January, 1931 to the 17th August, 1935. (Extracts).	222	31-5-35.	Further arguments by the learned Advocate for the added plaintiff No. 2 in T. S. No. 2 of 1934 and plaintiff No. 1 of T. S. No. 1 of 1934 heard in part. To 1st June 1935 for hearing of further arguments ...	N. B.	
	223	1-6-35.	Further arguments by the learned counsels for plaintiff No. 2 of Suit No. 2 of 1934 and plaintiff of T. S. No. 1 of 1934 heard in part. To 4th June 1935 for hearing of further arguments ...	N. B.	
	224	4-6-35.	Further arguments by the learned counsels for plaintiffs heard in full. Heard also the reply made by the learned Advocate for defendants 3 and 4 of this suit. Judgment reserved. The petition of plaintiffs 1 and 1(a) of this suit asking for an opportunity to be allowed to them to address the Court in reply to the arguments advanced by the counsels for the other parties, be filed with the record...	N. B.	
	*	*	*		*
	226	12-6-35.	Parties are informed that judgment will be delivered tomorrow ...	N. B.	

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Serial number of order or proceeding.	Date of order or proceeding.	Order or other proceeding.	Signature of Judge.	Signature of parties or pleaders when necessary.
1	2	3	4	5
*	*	*		*
228	13-6-35.	Parties being informed judgment delivered. This suit and suit No. 1 of 1934 are dismissed with costs and interest at 6 p. c p. a. till realisation as per judgment ...	N. Banerji,	
229	23-8-35.	Decree signed and sealed ...	B. P. B., Sub-Judge.	
230	16-1-35.	The plaintiffs file a petition for amendment of decree. Put up to-morrow for orders ...	B. P. B., Sub-Judge.	
231	17-8-35.	As the mistake in the decree complained of is merely (illegible) the prayer for amendment of the decree is allowed under Section 152 C. P. C. before the defendants' pleaders.	B. P. B.	

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No. 2.

In the 3rd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 2 Plaint, filed on the 30th January, 1931.

Nos. 1-22—Plaint in Title Suit No. 17 of 1931 of the 3rd Court of the Subordinate Judge, 24-Perganas.

Seal

Nawab Zinat Ara Zainab Begum *alias* Juhi Begum.

Sk. Wazir Ali Attorney.

Thumb impression

by

Bhupendra Nath Ghosh, Pleader.

In the 3rd Court of the Subordinate Judge at Alipore.
District 24-Parganas.

Suit No. 17 of 1931.

Nawab Zinat Ara Zinab Begum *alias* Juhi Begam daughter of Prince Qamar Qadar Mirza Mohamed Abed Ali Bahadur residing at No. 11, Rangolal Street, Kiddepore, Thana Watgunj, District 24-Perganas (penned through) 1. Nawab Syed Mohammad Hashim Ali Khan son of Nawab Zaighamuddowalah Bahadur of Fulkhana No. 14, Deorhi Agha Mir, Lucknow ... ... *Plaintiff.*

1(*a*) Syed Ashiq Hossein added as plaintiff *vide* Order No. 159 dated 23rd March 1935.

2. Under Order No. 26 dated 23rd April 1931.

Sreemati Mahmuda Bibee wife of Golam Hossain of 8-1, Amratola Lane, Calcutta is added as plaintiff.

versus

1. Mirza Mohammad Syed Ali son of Prince Qamar Qadar Mirza Mohammad Abed Ali Bahadur (penned through)—Dead—residing at 123, Circular Garden Reach Road, Thana Watgunj, District 24-Perganas.

1(*a*) Iffat Ara Hamidi Begum widow of late Mirza Mohammad Syed Ali.

1(*b*) Jahanara Jafri Begum 1(*c*) Keswar Ara Sadeka Begum daughter of late Mirza Mohammad Syed Ali, 1(*d*) Mirza Mohammad Wahed Ali minor son

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In the 3rd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 2. Plaint, filed on the 30th January, 1931.

of Mirza Mohammad Syed Ali represented by his natural guardian and mother Iffat Ara Hamidi Begum are substituted in place of deceased defendant No. 1.

2. Mirza Mohammad Syed Ali (penned through)—Dead—alleged trustee of the alleged (penned through) Waqf alleged to be created by Prince Qamar Qadar dated 14th June 1917 residing at 123, Circular Garden Reach Road, Thana Watgunj, District 24-Perganas ... ... *Defendant.*

2(*a*) Iffat Ara Hamidi Begum widow of Mirza Mohammad Syed Ali alleged trustee on behalf of her minor son of the alleged Waqf is substituted in place of deceased defendant No. 2 under order No. 139 dated 14th July 1934.

2(*b*) Jahanara Jafri Begum, 2(*c*) Keswar Ara Sadeka Begum daughter of Mirza Mohammad Syed Ali deceased are appointed co-Matwallis under order No. 113 dated 21st August 1934 and No. 116 dated 8th(?) September 1924.

Claim for partition and in the alternative recovery of possession of the plaintiff's share.

Suit valued at Rs. 2,02,000.

The abovementioned plaintiff states as follows :—

1. That Prince Qamar Qadar Mirza Mohammad Abed Ali Bahadur son of the King Wajid Ali Shah the last King of Oudh and father of the parties who was a Shia Mohammadan died and(?) intestate on 31st January 1919 leaving his considerable immovable property mentioned in the Schedule annexed to the plaint.

2. That the heirs of the deceased Prince were his widow, Shah Banu Amir Begam the plaintiff and the defendant No. 1 whose shares in the abovementioned properties according to Shia law were $\frac{1}{2}$, $\frac{1}{4}$, and $\frac{1}{2}$ respectively.

3. That the said Prince was at first living with his family at 123 Circular Garden Reach Road, Kidderpore but in or about the year 1915 a woman of low rank and station named Saheba Khatun became his concubine.

4. That at the time when the said Saheba Khatun became the concubine of the said Prince Qamar Qadar he was infirm and old and in his dotage and was addicted to taking opium, cocaine and other like drugs which affected not only his bodily health but also his mental powers so that gradually he was

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incapable of looking after his affairs and steadily declined in health and became feeble in mind until he died.

5. That taking advantage of the mental and bodily weakness of the Prince the said Saheba Khatoon gradually began to exercise great and undue influence over him until she so completely dominated his will that he was a mere puppet in her hands. She caused him to leave his family dwelling house, his wife and children and to live with her at No. 11 Garbari Lane in Kidderpore.

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6. That in the year 1916, the said Saheba Khatoon got the Prince to execute two leases of almost all his properties in her favour and also got him to endorse two G. P. Notes of the face value of Rs. 1,56,000.

7. That because of utter estrangement between Amir Begam Saheba and the Prince due to the undue influence of Saheba Khatoon, she (Amir Begam) made repeated demands of her dower and pressed for the payment of the same and finally on 3rd June 1917 caused a letter of demand(?) served on the Prince.

20

8. That the said Saheba Khatoon in order to defraud Amir Begam and (*sic*) defeat her claim made it appear that the Prince signed at some places on a document purporting to be a deed of Wakf of all his immovable properties which is absolutely void.

9. That at the time when the alleged deed of Waqf purports to have been written and registered the said Prince was residing with the said Saheba Khatoon and completely under her control and influence and was physically as well as mentally utterly incapable of understanding or executing any docu-
30 ment; the Waqfnama is absolutely void.

10. That the plaintiff believes that the said deed of Waqf was prepared and completed and registered by Saheba Khatoon without the Prince's being aware of the contents, true nature and purpose of the deed which was wholly void and ineffectual.

11. That the alleged Waqf is also void because the Prince had never a real intention to create a Waqf and never intended to divest himself of the ownership and possession of the properties mentioned in the alleged deed of
40 Waqf which was merely a fictitious and paper transaction. The Prince remained owner of the properties and in enjoyment of the same till his death.

12. That under the alleged Waqfnama the alleged Waqf provides for an unreasonable salary for himself as Mutwalli and the alleged Waqf is consequently absolutely void *ab initio* according to Shia law.

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In the 3rd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 2. Plaint, filed on the 30th January, 1931.

13. There was no transfer of possession as required by law to be essential for making a complete and valid Waqf which is consequently illegal inoperative and void. The Prince retained till his death the proprietary possession of properties mentioned in the alleged deed of Waqf.

14. That the alleged deed of trust was never acted upon and after the death of the Prince his heirs became the owners according to their legal shares and remained in proprietary possession and enjoyment of the properties mentioned in the deed of Waqf.

15. That Shah Bahu Nawab Amir Begam died on 28th January 1928 leaving the plaintiff and the defendant No. 1 as her heirs and her $\frac{1}{4}$ share in the properties of the Prince devolved upon her heirs and thus the plaintiff's share in the entire properties of the Prince became one-third while of the defendant No. 1 two-thirds.

16. That the plaintiff is in exclusive possession of some of the properties mentioned in the annexed schedule and the remaining properties have all been and are in the joint possession of the plaintiff and defendant No. 1.

17. That the plaintiff finds it inconvenient to enjoy the properties jointly with the defendant No. 1 and therefore proposed to the defendant No. 1 to get the properties amicably partitioned but the defendant avoided partition and eventually refused partition and defendant 2 now sets up the abovementioned Waqfnama hence the necessity of the present suit.

[18. That in case the plaintiff is held not entitled to sue for partition the plaintiff in the alternative claims a decree for the recovery of possession of her share in the properties in suit contained in the Schedule annexed to the plaint for which the plaintiff will pay additional Court-fee. (Struck off]*

19. That the plaintiff has realised less than her share of income and is therefore entitled to *mesne profits* inclusive of interest which have been assessed at Rs. 2,000 approximately on which a Court-fee of Rs. 125 has been paid and the plaintiff will pay further Court-fee on additional *mesne profits* found due on accounting and enquiry, and the plaintiff also claims interest on *mesne profits* due to her.

20. That the cause of action accrued to the plaintiff within the jurisdiction of this Court where most of the properties in suit are situate on or about 6th November 1929 when defendant No. 1 ultimately refused partition and defendant 2 set up the alleged deed of Waqf in his favour.

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*Amended *vide* Order No. 144 dated 22nd December 1934.

N. B.,
S J.
22-12-34.

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21. That the valuation of suit for purposes of jurisdiction as well as Court-fees is Rs. 2,02,000 on which a Court-fee of Rs. 207-8 annas has been paid as detailed below :—

	Court-fee paid. Rs.	a.	p.
(*i*)—Relief (a) for partition	20	0	0
(*ii*)—Relief (c) for *mesne profits* approximately amount @ Rs. 2,000 ...	187	8	0
Total ...	207	8	0

The plaintiff prays :—

(*a*)—That a decree for separate possession by partition of the plaintiff's one-third share in the properties mentioned in the Schedule annexed to the plaint be passed against the defendants.

[(*b*)—That in case the plaintiff is held not entitled to partition a decree for recovery of possession of the plaintiff's one-third share in the properties in suit contained in the Schedule annexed to the plaint be passed in favour of the plaintiff against the defendants. (Struck off)]*

(*c*)—That an enquiry and accounting of the profits of the properties in suit be ordered and a decree for the amount found due to plaintiff by way of *mesne profits* with interest be passed against the defendants, both *mesne profits* and interest being till date of suit then from date of suit to date of decree and again to date of separate possession of recovery of possession.

(*d*)—That such other relief as the Court deems fit be passed in favour of the plaintiff against the defendants.

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*Amended *vide* Order No. 144, dated 22nd December 1934.

(Illegible),
S. J.
22-12-34.

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In the 3rd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 2. Plaint, filed on the 30th January, 1931.

Thumb impression
By
Bhupendra Nath Ghose,
Pl.

Schedule of immovable properties.

1.—Premises No. 123, Circular Garden Reach Road, that is one piece or parcel of Lakhraj Sidhyaniskar Darpanbasti or homestead land measuring about seven and half cottahs more or less, with brick-built two-storied house with out-houses court-yard, stable, boundary walls, etc., better known as Khasru Manzil with pathway passage, drain sewers, water taps, reservoir and all kinds of rights, title and interest, rights of easement which appertain to or are in any way connected with the said house and premises or ordinarily held and possessed therewith or reckoned as appertaining to(*sic*) connected with the said premises No. 123, Circular Garden Reach Road, Kidderpore, Thana Watgunge, Ward No. 25 in Sub-Registry Alipore, Pergana Magura, District 24-Parganas, which is bounded as under namely North—premises No. 121, Circular Garden Reach Road, West—Garbari Lane, South—premises No. 122, Circular Garden Reach Road, West—Circular Garden Reach Road.

2.—Premises No. 122, Circular Garden Reach Road that is one piece or parcel of Darpan land, lying at Kidderpore, within the jurisdiction of Thana Watgunge, Sub-Registry Alipore, Pergana Magura, District 24-Parganas, measuring about 3 cottahs 3 chittacks 29 sq. ft. and odd, bounded by and adjoining on the North of premises No. 123, Circular Garden Reach Road, West and South —Garbari Lane, East—Circular Garden Reach Road. This piece or parcel of land is held by monthly tenant-at-will. Premises No. 122, Circular Garden Reach Road, Ward No. 20 with brick-built drain fence, water course, pathway, passage, rights of easement and title of every kind, which appertain or are in any manner connects(*sic*) with this piece or parcel of land as ordinarily held and possessed or reckoned as appertain to or connected with the same.

3.—Nos. 121/1 and 121/2, Circular Garden Reach Road that is one piece or parcel of Lakhraj Basti or homestead land lying at Kidderpore Uriapara, within the jurisdiction of Thana Watgunge Sub-Registry Alipore, Pergana Magura, District 24-Parganas by measurement containing about 3 cottas 13 chittaks 22½ sq. ft. bounded by and adjoining on the North—Garbari Lane bounded by East—Circular Garden Reach Road, South—Land of Block No. 4 of the Partition Plan in Suit No. 65 of 1894 in the First

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Sub-Judge's Court, Alipore, West—Land of Block No. 4 of the said Plan. This piece or parcel of land is of the 1 block of land of the said plan and is held by monthly tenants at-will. Premises Nos. 121/1 and 121/2, Circular Garden Reach Road, Ward No. 20 with all paths, passages, rights, title and interest and rights of easements of every kind which appertain to or are in any manner connected with this piece or parcel of land or ordinarily held and possessed therewith or reckoned as appertaining to or connected with the same.

4.—Premises Nos. 120 and 120/1, Circular Garden Reach Road, that is, one piece or parcel of Lakhraj Basti land lying in Kidderpore, within the jurisdiction of Thana Watgunge, Sub-Registry Alipore, Pargana Magura, District 24-Parganas, measuring about one bigha of land bounded by and adjoining on the North partly the land of Motilal Das and partly the land of Bhusan Chandra Dhaw, East—drain and after that the buildings of Sarat Chandra Hazra and others, South—Circular Garden Reach Road, Garage, West—Land of Sarbeswar Chandra Chunder—Premises No. 120, Circular Garden Reach Road, Ward No. 20 which piece or parcel of land is held by monthly tenants-at-will with all pathways, pasages, rights, title and interest and rights of easement of every kind and which appertain to or are in any way connected with the said piece or parcel of land or ordinarily held and possessed therewith or reckoned as appertaining to or connected with the same.

5.—Premises No. 115 and 115/1, Circular Garden Reach Road that is the piece or parcel of Lakhraj Basti land, lying at Kidderpore, within the jurisdiction of Thana, Watgunge, Sub-Registry Alipore, Pergana Magura, District 24-Parganas, measuring about one bigha of land bounded by and adjoining on the North—lands of Sarcar and the Raja of Bhukailash, East—drain and after that the land of Hari Mohan Das at present of Fakir Mahammad and others, West—house of late Jagadamba Bewa and common passage, South—Circular Garden Reach Road—Ward No. 25 which piece or parcel of land is held by monthly tenants-at-will with one brick-built one-storied house with court-yard, boundary walls, drain, pathways, passages, water-taps, reservoir, rights, title and interest, the rights of easement of every kind which appertain to or are in any way connects (*sic*) with the said house and premises and land or ordinarily held and possessed therewith or reckoned as appertaining to or connected with the same.

5.—Premises No. 36, Circular Garden Reach Road a four anna share thereof that is an undivided building or house of European style with out-houses, court-yard, garden, etc., formerly Premises No. 35, at No. 36, Circular Garden Reach Road, Ward No. 24,

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In the 3rd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 2. Plaint, filed on the 30th January, 1931.

situate at Kidderpore, within the jurisdiction of Thana Ekbalpore, Sub-Registry Alipore, Pergana Magura, District 24-Parganas, containing about sixteen cottas ten chittacks twelve and half gandas of Basti land thereunder of which twelve cottas 15 chittacks are Lakhraj and 3 cottas 11 chittacks and 12½ gandas are Sahab Bagicha and Darpan and in respect whereof a yearly Mokarari Jama of four rupees annas four and three and a half gandas has to be paid to the office of Panchannagram appertaining to the Collectorate of 24-Perganas bounded on the North partly by the Circular Garden Reach Road, West—Kailasarak Road, South—Pipe Road, East—partly by premises No. 16, Pipe Road partly by the tenanted land Rahim Ostagar and partly by Premises No. 35, Circular Garden Reach with fence, water-course, sewer, pathways, passage, water taps, reservoir, rights, title and interest and rights of easement of every kind which appertain to or are in any way connected with the said building land and premises ordinarily held and possessed or reckoned as appertaining to or connected with the same.

7.—Premises Nos. 1/1, 2, 2/3 and 2/4, Bhukailash Road, 17, 18, 18/1, Kailasarak Road and 45, Circular Garden Reach Road that one piece or parcel of Sidhya or valid Lakhraj rent-free tenanted land Nos. 447, 4/5-C Register lying at former premises Nos. 1, 2, 2/2 and present 1/1, 2, 2/, (*sic*) and 2/4, Bhukailash Road, 17, 18 and 18/1, Kailasarak Road and 45, Circular Garden Reach Road Dihi Kidderpore and Komedanbagan, Kismat Kidderpore Haripriya Taluk Parui Narain Mistry, within the jurisdiction of Thana Ekbalpore, Sub-Registry Alipore, Pergana Magura, District 24-Parganas according to measurement containing 18 bighas 8 cottas ten chittacks 4 feet sq. bounded by and adjoining on the North partly by the boundary stone of the Calcutta Municipal Corporation, partly dwelling house and land of Butto Krishna Shah and partly Debutter land South—partly Debutter land of the estate Raja Kali Sanker Ghoshal partly new road and partly tenanted land of Kalachand Jana and Koila Bibi, East—Municipal drain and Kaila Sarak Road, West—Bhukailash Road.

8.—Premises Nos. 6 and 7, Kailasarak Road and No. 3, Kailasarak Lane that is one piece or parcel of Lakhraj tenanted land lying at former Nos. 3, 6 and 7, Kailasarak Road, present No. 3, Kailasarak Lane and Nos. 6 and 7, Kailasarak Road Dihi Kidderpore, Sub-Registry Alipore, Pergana Magura, District 24 Perganas according to measurement containing in all bighas 6 cottas 5 chittaks 15 sq. ft. bounded by and adjoining on the North Kailasarak Lane, South partly tenanted house of Sanu and Sarkar and partly tenanted house and land of Mahammad, East—partly one passage Bhuban Mondal, West—Kailasarak Road.

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9.—Premises No. 11, Kailasarak Road, that is one piece or parcel of Lakhraj tenanted landed property and premises containing about 2 Bigha 16 cottas 6 chittacks 27 sq. ft. more or less lakhraj Nos. 45 and 477 Register No. C of the Collectorate of 24-Parganas situate at former No. 11/1 and present No. 11, Kailasarak Road Dihi Kidderpore, Thana Ekbalpore, Sub-Registery Alipore, District 24-Parganas bounded and adjoining on the North partly Debutter land of the Bhukailash Raj estate and partly public new road which is a branch of Kailasarak Road, South—Ekbalpore Road, East—Kailasarak Road, West—Debutter land of the said estate.

10.—Premises No. 4, Kailasarak Road and No. 1/1, Kailasarak Lane, that is one piece or parcel of Sidha Niskar (land at present No. 4, Kailasarak Road and No. 1/1, Kailasarak Lane, Ward No. 24, Kidderpore Komedan Bagan, Kismat Ekbalpore and Jagathir, Thana Ekbalpore, Sub-Registry Alipore, Pergana Magura, District 24 Perganas containing 7 seven bighas 4 cottas 5 chittacks 27 sq. ft. bounded by and adjoining on the north boundary stone of the Calcutta Municipal Corporation and surplus land tenanted land and Debutter land aforesaid, West—Kailasarak Road aforesaid.

11.—Premises No. 1, Dent Mission Road, that one masonry building premises or dwelling house with one piece or parcel of Mourasi Mokarari lands or land containing about 4 cottas whereof a yearly Jama of one rupee eight (*sic*) and eighteen gandas is payable to Bamasundari Debi and others Premises No. 1, Komedan Bagan Road, at present 1, Dent Mission Road, Alipore, Pergana Magura, District 24-Parganas bounded by and adjoining on the North—house and land of Kedar Nath Das, East—premises No. 2, Dent Mission Road, South—Komedan Bagan Road, at present Dent Mission Road, West—house and land of Kedar Das and public road.

12.—Premises No. 2, Dent Mission Road Lakhraj land, lying at Komedan Bagan Road, Kidderpore, Thana Watgunge, Sub-Registry Alipore, Pergana Magura, District 24-Parganas, about 8 cottas former No. 2, Komedan Bagan Road, at present No. 2, Dent Mission Road, Ward No. 24 with brick-built roomed dwelling-house and out-houses bounded by and adjoining on the North—Premises No. 1, Dent Mission Road and the house of Kedarnath Das, West—Komedan Bagan, at present Dent Mission Road, East—tank and compound of Harimohan Banerjee, South—Busti land of Bhukailash.

13.—Premises 50/2, Dent Mission Road, that is one piece or parcel of Lakhraj land containing about 13 cottas premises No. 50/2, Dent

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In the 3rd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 2. Plaint, filed on the 30th January, 1931.

Mission Road, Ward No. 24, Kidderpore, Thana Ekbalpore, Sub-Registry Alipore, Pergana Magura, District 24-Parganas, bounded by and adjoining on the North—land of Ismail East—Dent Mission Road, South—Narrow passage, West—land of Ismail.

14.—Premises Nos. 28, 30, 31, 32 and 32/1, Komedan Bagan Road, that is one piece or parcel of Lakhraj land containing about 3 bighas 3 cottas 6 chittacks 24 sq. ft. former premises Nos. 28/0, 30, 31, 32 and 32/1, at present premises Nos. 28, 30, 31, 32 and 32/1, Komedan Bagan Road, situate at Kidderpore Komedan Bagan, Thana Ekbalpore, Sub-Registry Alipore, Pergana Magura, 24-Parganas bounded by and adjoining on the North—house and land of Sarbeswar Chandra and Dent Mission Road, East—drain, South—Municipal drain, West—land of Atal Behary Addy.

15.—Premises No. 1, Ekbalpore Road, that is one piece or parcel of Lakhraj land containing about one bigha bounded by and adjoining on the North—Premises No. 8, Kailasarak Road, East—brick-built house of Ebrahim, South—land of Ehrahim, West—Premises No. 7, Kailasarak Road which piece or parcel of land is held by monthly tenant-at-will with field fence, water courses bush, pathway, tank, passage for discharge of water all right, title and interest, right of easement of every kind which appertain to or are in any way connected with the said piece or parcel of land ordinarily held and possessed therewith or reckoned as appertaining to or connected with the said premises No. 3, Ekbalpore Road.

16.—Premises No. 7, Ekbalpore Road, that is one piece or parcel of Lakhraj land containing about one bigha bounded by and adjoining on the North—land of Kalimiah Munshi, East—premises No. 10, Ekbalpore Road, South—Ekbalpore Road, West—land of Hari Mukherji which piece or parcel of land is held by monthly tenants at-will with field fence drain bush, water courses, pathway, passage, rights, title and interest right of easement of every kind which appertain to or are in any (way) was ordinarily held and possessed therewith or reckoned as appertaining to or connected with the same.

17.—Premises No. 10 Ekbalpore Road, that is one piece or parcel of Lakhraj land containing 15 cottas with broken buildings on a part whereof with outhouses Courtyards walls etc. bounded by and adjoining on the North—house of Munshi Kalimiah East—Dent Mission Road, South—Ekbalpore Road West—premises No. 7 Ekbalpore Road with field fence drain bush pathway passage sewer water course rights title and interest and rights of easement of every kind which appertain to or are in any way connected with the said piece or parcel of land building or ordinarily held and possessed

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therewith or reckoned as appertain to or connected with the same premises No, 10 Ekbalpore Road.

18.—Premises No. 68 Ekbalpore Road, that is one premises building or dwelling house with outhouses Courtyard etc. appertaining thereto with Lakhraj land thereunder measuring about 14 cottas premises 68 Ekbalpore Road Ward No. 24 situate at Ekbalpore, Thana Ekbalpore, Sub-registry Alipore Pergana Magura, District 24-Parganas bounded by and adjoining on the North—Ekbalpore Road East—land of Bhukailaish South—land of Babulal West—house of Abdul Hamid, hide merchant with fence sewer pathway passage drain right title and interest rights of easement of every kind which appertain to or are in any way connected with the said building and premises or ordinarily held and possessed therewith or reckoned as appertaining to or connected with the same.

19.—Premises No. 12 Ekbalpore Road, that is one premises building and brick-built dwelling house with outhouses courtyard etc. appertaining therein with Lakhraj land thereunder measuring about 6 cottas premises No. 12 Ekbalpore Road Ward No. 24 situate at Ekbalpore Road Thana Ekbalpore Sub-registry Alipore Pergana Magura District 24-Parganas bounded by and adjoining on the North—Mir Abdul's land and tenanted land East—narrow passage, after that premises No. 18 Ekbalpore Road South—Ekbalpore Road West—house of Tularam Das with fence bush sewer pathway passage drain right title and interest and rights of easement of every kind which appertain to or are in any way connected with the said building or ordinarily held and possessed with or reckoned as appertaining to or connected with the same.

20.—Premises No. 18 Ekbalpore Road that is one piece or parcel of Lakhraj land lying at Ekbalpore lane Thana Ekbalpore Sub-registry Alipore Pergana Magura District 24-Parganas containing about 6 cottas 6 chittacks of land with one masonry house thereon of European style with outhouses and courtyard bounded by and adjoining on the East—house of the tenant Tabrit Molla at present premises No. 19-1, Ekbalpore Road, West narrow passage North—tank of the tenant Kania Lal Rajak that is premises No. 17 Ekbalpore Road South—Ekbalpore Road premises No. 18 Ekbalpore Road with broken buildings field pathway passage fence drain right title and interest rights of easement of every kind which appertaining to or in any way connected with the said piece or parcel of land and premises or ordinarily hold and possessed therewith or reckoned as appertaining thereto.

21.—Premises No. 1 Mominpore Road, that is one piece or parcel of Lakheraj land situate at Ekbalpore Road, Thana Ekbalpore,

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In the 3rd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 2. Plaint, filed on the 30th January, 1931.

Sub-registry Alipore Pergana Magura District 24-Parganas containing about 8 cottahs bounded by and adjoining on the North Ekbalpore Road East—8 cottah plot South—House of Tularam West—Mominpore Road Dihi premises No. 1 Mominpore Road with field fence bush drain pathway passage right title and interest rights of easement of every kind which appertain to and are in any way connected with the said piece or parcel of land and premises or ordinarily hold and possessed therewith or reckoned as appertaining thereto.

22.—Premises 32 Mominpur Road that is one building premises and dwelling house with outhouse, courtyard etc. appertaining thereto with Mourasi Mokarari land thereunder standing about one bigha one cotta 4 chittacks 3 gandas one cowri and one kranti of land on a part of which the said building is erected or built premises 36 Mominpore Road Ward No. 24 situate at Ekbalpore Thana Ekbalpore Sub-registry Alipore Pargana Magura District 24-Parganas bounded by and adjoining on the north—tenanted land of Kanai Rajak East—Mominpore Road, South—partly Ekbalpore land and partly No. 35 Mominpore Road, west—tenanted land of Kanail*(sic)* Rajak with fence drain pathway passage sewer right title and interest rights of easement of every kind which appertain to or are in any way connected with the said building and premises or ordinarily held and possessed therewith or reckoned as appertaining to or connected with the same.

23.—Premises No. 35 Mominpore Road that is one piece or parcel of Lakhraj land situate at Ekbalpore, Thana Ekbalpore, Sub-registry Alipore Pergana Magura District 24-Parganas containing about 10 cottahs 10 chittacks 13 gandas one cowri and one kranti of land bounded by and adjoining on the North—premises No. 36 Mominpore Road East—Mominpore Road, North—Ekbalpore Lane West Public drain after that land of Kanai Rajak premises No. 35 Mominpore Road with field tank pathway passage fence drain right title and interest rights of easement of every kind which appertain to or in any manner connected with the said piece or parcel of land and premises ordinarily held and possessed therewith or reckoned as appertaining to or connected with the same.

24.—Premises No. 7 Ekbalpore Lane that is one building premises and dwelling house with outhouse courtyard appertaining thereto with Lakhraj land thereunder measuring about 12 cottas premises No. 7 Ekbalpore Lane, Ward No, 24 situate at Ekbalpore Thana Ekbalpore Sub-registry Alipore Pergana Magura District 24-Parganas bounded by and adjoining on the North—land of Sharfuddin East—No. 8 Ekbalpore Lane West—brick built house of Ramjan cloth seller with fence drain patnway passage right title

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and interest right of easement of every kind which appertain to or are ordinarily held and possessed therewith or reckoned as appertaining to or connected with the same.

25.—Premises No 2, Ekbalpore Lane that is one piece or parcel of Lakhraj Brahmatter land situate at Ekbalpore, Thana Ekbalpore Sub-registry Alipore Pargana Magura District 24-Parganas containing about 14 cottahs of land bounded by and adjoining on the South—Ekbalpore Lane East—narrow passage West—premises No. 7, Ekbalpore Lane North—Municipal drain, Golam Rahman Butler's land premises No. 8, Ekbalpore Lane with tank trees field pathway passage fence drain right title and interest, rights of easement of every kind which appertain to or are in any way connected with the said piece or parcel of land hold and possessed therewith or reckoned as appertaining to or connected with the same.

26.—Premises Nos. 55/1 and 55/1/1, Diamond Harbour Road that is one-storied brick-built godown tiled hut and golpatta hut with lands or land appertaining about 12 cottas 13 chittacks of Niskar Brahmattar tank filled up land or lands on a part whereof the said premises house and godown are erected or built Nos. 55/1 and 55/1/1, Diamond Harbour Road, Ward No. 24 situate at Barasat Road, better known as Mominpore, Thana Mominpore Sub-registry Alipore Parganah Magura District 24-Parganas bounded by and adjoining on the North—lands of Bhukailash Ghosal estate, Bholanath Saha's and Pran Krishna Ghose's Mourasi Mokrari land and godown South—tenanted land of Bamasundari Debi and the tiled hut thereon West—land of Jewalal Chamar's present land of Hiru Mistri East—Diamond Harbour Road with compound walls fence drain pathway passage sewer right title and interest right of easement of every kind which appertain to or are in any way connected with the said house and premises or ordinarily held and possessed therewith or reckoned as appertaining to or connected with the same.

27.—Premises No. 28, Ramkamal Mukherji Street that is one piece or parcel of Lakhraj resumed Mokarari Mourasi land situate at Kidderpore Ramkamal Mukherji Street Thana Watgung Sub-registry Alipore Pergana Magura District 24-Parganas measuring about one bigha 16 cottas at present one bigha 19 cottas 6 chittacks according to the map of Mr. Smart bounded by and adjoining on the North—Municipal drain after that Ramkamal Mukherji Street East house and drain of Bhagwan Chunder Mukherji deceased dwelling house of Brindaban Chunder Singh tenanted house of Bistoo Chandra Das land of Ghosal of Bhukailash and tenanted house of Abdul Aziz known as premises No. 2,

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In the 3rd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 2. Plaint, filed on the 30th January, 1931.

Pitamber Sircar Lane West—house and land of Abdul Aziz and Pitamber Sircar Lane Premises No. 20, Ramkamal Mukherji Street with field pathway passage fence drain right title and interest rights of easements of every kind which appertaining to or are in (*sic*) was connected with the said piece or parcel of land or ordinarily held and possessed therewith or reckoned as appertaining to or connected with the same No. 28.

28.—Premises Nos. 14 and 14/1, Watgunj Street, that is one piece or parcel of permanently settled land holding No. 45 measuring about 4 bighas 16 cottas 4 chittacks bearing a fixed annual Government Revenue of 16-0 3 (*sic*) sixteen rupees ten annas 3 pies and holding No. 7, measuring about 10 cottas 13 chittacks 12 gandas and one cowri bearing fixed Government Revenue of 4-5-0(*sic*) four rupees and five annas and six pies Khas Mehal Towji No. 1070 known as Saheba Baghicha, situate at Watgunj, Pergana Magura, District 24-Parganas together containing about 5 bighas 7 cottas of permanently settled land bounded by and adjoining on the South—Watgunj Street, North and West—Kothi of China Saheb, East and of Ghosal premises Nos. 14 and 14/1, Watgunj Street with field pathway, passage, fence, drain, right, title and interest, rights of easement of every kind which appertain to or are in any way held and possessed therewith or reckoned as appertaining to or connected with the same.

29.—Premises No. 36 Watgunj Street, that is one piece or parcel of Mourasi Mokurari land, Khas Mehal Towzi No. 1070 Saheban Bagicha, situate at Watgunj Street, Thana Watgunj, Sub-Registry Aliporc, Pargana Magura District 24-Parganas containing about one bigha 4 cottas 15 chittaks 12 gandas 2 cowri of land in respect of which a fixed annual Jama of Rs. 1-13-6 one rupee thirteen annas six pies has to be paid in the estate of Ashutosh Deb and Kamalanath Deb bounded by and adjoining on the North—Watgunj Street, South—garden land of Tarapada Ghose and Debendra Nath Mukherjee, deceased, East—land of Peary Lal Mandal and are at present of Tarapada Ghose and Debendra Nath Mukherji, deceased, West—land of Jagat Krishna Haldar at present of Sheik Esmile, deceased, premises No. 36 Watgunj Street with field, pathway, passage, fence, drain, right, title and interest rights of easement of every kind which appertain to or are in any way connected with the said piece or parcel of land or ordinarily held and possessed therewith or reckoned as appertaining to or connected with the same.

30.—One piece or parcel of Sidhya Niskar or valid Lakheraj, Sub-Registry Alipore, District 24-Parganas measuring 5 bighas 10 chittacks bounded by the said adjoining land on the North—Pucca

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Road upto Bara Mehal, West—Russa Pagla Road, South—brick-built wall of the garden of Sahebzada Anwar Saheba, deceased, at present of Nawab Sultan Alam property No. 32 of this document with field pathway, passage, fence, drain, right, title interest rights of easement of every kind which appertain to or are in any way connected with the said piece or parcel of land or ordinarily held and possessed therewith or reckoned as appertaining to or connected with the same.

31.—One piece or parcel of Sidhya Niskar or valid Lakhiraj land situate at Chandpur Bara Mehal Thana Sadar Tollygunj, Sub-Registry Alipore, 24-Parganas, former No. 189 after that No. 233 Chandpur Bara Mehal at present No. 306 containing about 19 cottas 13 chittacks with one brick-built two-storeyed house, godown, compound walls standing on a part thereof bounded and adjoining on the North—land of Sahebzada Mahamed Sheikh, after that of Shahebzada Akbar Sheikh and a road upto Bara Mehal, West—property No. 31 of this document, South—tank of Sahebzada Nasiruddin Hyder Saheb, stable and mosque of Shahebzada Nasiruddin Hyder Saheb with field, pathway, passage, fence, drain, right title interest rights of easement of every kind which appertain to or are in any way connected with the said piece or parcel of land house and premises or ordinarily held and possessed therewith or reckoned as appertaining to or connected with the same.

32.—One brick-built house with the land situate at Mohalla Golagunj Lucknow City measuring about 4 cottas more or less bounded on the North—house of Nadir Shaheb, South—house of Karim Shah, west—Municipal Lane, East—house of Daroga Hossain.

33.—One brick-built house with land situate at Mahalla Mansoornagar, Lucknow-city, about 6 cottas land, North—land and garden of Mashiria, East—Topawalla's Lane.

34.—One plot of garden with land situate at Kalapahar Lucknow City about one hundred and five bighas ten cottas Nos. 16 to 1-415 known as Dagphotta Bag near Kalapahar, Mouza Dhawan, Pargana and Tehsil Lucknow, Thana Saadatgunj, Sub-Registry Lucknow, District Lucknow bounded North—Mama Mouza land of Babu Sree Ram, East, West and South—land of Mothi and land of Pasi Mach Jute.

35.—One piece or parcel of Lakhiraj land 6 cottas more or less situate at Matiaburaj (Garden Reach) adjoining the cemetry of Hossain Abad, Thana Muchikhola, Pargana Magura, Sub-Registry Alipur, District 24-Parganas, bounded North—of the aforesaid cemetry,

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In the 3rd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 2. Plaint, filed on the 30th January, 1931.

South—Circular Garden Reach Road, West—the aforesaid cemetry, East—brick-built wall.

36.—Premises No. 28 Circular Garden Reach Road that one piece or parcel of Lakheraj land situate at Kidderpore within the jurisdiction of Thana Watgunge, Sub-Registry Alipore, Parganah Magura, District 24-Parganas, Ward No. 24 measuring about 2 bighas 8 cottas with one two-storeyed brick-built house, out-house, godown, court-yard, compound walls, premises No. 28 Circular Garden Reach Road bounded North—Circular Garden Reach Road, East—premises No. 27 Circular Garden Reach Road, West—land of Bhukailash with out-houses, court-yard, compound-walls, fence, drain, sewer, water taps, reservoir. right, title and interest rights easements of every kind which appertain to or are in any way connected with the said house and premises or ordinarily held and possessed therewith or reckoned as appertaining to or connected with the same.

37.—Premises No. 27, Circular Garden Reach Road, that is brick-built premises building or dwelling-house of European style with that piece or parcel of land on which the said house is situated or built measuring about 16 cottas more or less situate at premises No. 27, Circular Garden Reach Road in the suburbs of the town of Calcutta, Thana Ekbalpore, Sub-Registry Alipore, Pergana Magura, District 24-Parganas, Ward No. 26, bounded by and adjoining No. 26, Circular Garden Reach Road, South and West—premises No. 28, Circular Garden Reach Road.

38.—Premises No. 11, Garbari Lane, that one building premises and dwelling house with out house court yard, etc., appertaining thereto with Lakhraj land thereunto containing about 2 bighas of land premises formerly Nos. 10 and 11, Garbari Lane, at present only No. 11, Garbari Lane, Thana Watgunj, Sub Registry Alipore, Pergana Magura, District 24 Parganas, bounded by and adjoining on the North—land of Narakristo Ahir deceased, East—tenanted house of Aghore Nath Mookherji, South—tenanted house of Motilal Bannerji and others, West—Garbari Lane with fence drain, passage, pathway, sewer, right, title and interest, right of easement of every kind which appertaining to or are in any way connected with the said house and premises ordinarily held and possessed therewith or reckoned as appertaining to the same.

39.—Premises No. 60, Ballygunge Circular Road, that is one piece or parcel of Lakhraj Cantonment (Chhwani) land holding No. 60 L. Sub-division 4, Division Panchannagram, situate at Ballygunge, Sub-Registry Alipore, Thana Ballygunge, District 24-Parganas containing about 6 bighas 13 cottas 14 chittacks of land with

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one-storied masonry house which stands on a part of it bounded by and adjoining on the North and West—Cantonment land, East—Government land and premises No. 29, Ballygunge Circular Road, South—Ballygunge Circular Road, premises former No. 5 at premises 60, Ballygunge Circular Road with field fence, drain, right, title and interest, pathway, passage, rights of easement of every kind which appertain to or are in any way connected with the said piece or parcel of land and house and premises or ordinariiy held and possessed therewith or reckoned as appertaining to or connected with the same.

Verification.

I, Zinat Ara Begam *alias* Juhi Begum, plaintiff abovenamed, do hereby declare that the facts stated in paragraphs 1 to 9, last sentence of 11, 13 to 17, and 20 are true to my knowledge and the contents of paras 10, first sentence of 11, 12, 18, 19, 21 and 22 are true to my information and belief, accordingly I sign this verification, this the 29th day of January, 1931, at my residence No. 4, Rangalal Street, Kidderpore.

Thumb impression.

Seal.

Nawab Zinat Ara Zainab Begum *alias* Juhi Begum.

Sk. Wazir Ali,
Attorney.

(*Name and address of the party.*)

By
Bhupendra Nath Ghosh,
Pleader.

Form of Registered Address of a Party.

(Rule 14(a), Order VI. C. P. C.).

In the 3rd Court of the Subordinate Judge of 24-Parganas at Alipore.

T. Suit No. of 1931.

Nawab Zinab Ara Zainab Begum *alias* Juhi Begum ... *Plaintiff,*

versus

Mirza Mahamed Syed Ali ... ... *Defendant.*

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In the 3rd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 2. Plaint, filed on the 30th January, 1931.

Name.	Pliantiff or Defendant.	Residence (village), Post office and Thana.	Remarks.
Nawab Zinab Ara Zainab *alias* Juhi Begum, daughter of Prince Qamar Qadar Mirza Mahamed Abed Ali Bahadur.	Plaintiff.	No. 11, Rangolal Street, Kidderpore, Thana Watgunge, P. O, Kidderpore, District 24-Parganas.	
(1) Mirza Mahamed Syed Ali, son of Prince Qamar Qader Mirza Mahamed Abed Ali Bahadur.	Defendant.	123, Circular Garden Reach Road, Thana Watgunge, P. O, Kidderpore, District 24-Parganas.	

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No. 3.

In the 3rd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 3. Petition on behalf of Sm. Mahmuda Bibi for being substituted in place of the deceased plaintiff or added as a co-plaintiff, filed on the 7th April, 1931.

No. 3—Petition on behalf of Mahmuda Bibi for being substituted in place of the deceased plaintiff or added as a co-plaintiff.

Mahmuda Bibi (in Urdu),
Identified by Yacoob Mahamed Kharwa,
Filed by
Jatindra Nath Mitra.

In the 3rd Court of the Subordinate Judge of Alipore,
District 24-Parganas.

Partition Suit No. 17 of 1931.

Sm. Zinnat Arah Zainab Begum *alias* Juhi Begum ... *Plaintiff*,

versus

Mirza Mahamed Syed Ali ... *Defendant.*

Under Order 1 Rule 10 C. P. C.

Application :

In the above case the submission of the applicant, Sm. Mahmuda Bibi, wife of Golam Hossain Draji by creed Musalman, by occupation landholder of 8/1 Amratola Lane, Calcutta is as follows :—That the plaintiff has sold all the right title and interest in respect of the properties forming the subject matter of this suit, to this petitioner by a registered deed of out and out sale, dated the 17th February 1931 and the petitioner has stepped into the shoes of the plaintiff in respect of the properties in suit, it is necessary that the applicant should carry on the present partition suit either as a substituted plaintiff in place of the plaintiff or as a co-plaintiff and she is entitled to prosecute the same as such ; otherwise this applicant will suffer heavy loss. So by filing this petition it is prayed that either the applicant may be made a co-plaintiff or the plaintiff may be made a *proforma* defendant and the applicant may be substituted in her place and the plaint may be amended to that effect as per the schedule below and necessary orders may be passed directing the applicant to carry on the present suit either as a plaintiff or as a co-plaintiff. Be it mentioned that the Kobala executed by the said plaintiff Juhi Begum in favour of the applicant is filed herewith in support of this application. This is the submission. Finis. Dated 6-4-31.

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In the 3rd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 3. Petition on behalf of Sm. Mahmuda Bibi for being substituted in place of the deceased plaintiff or added as a co-plaintiff, filed on the 7th April, 1931.

Schedule of amendment.

Plaintiff—

The words—"Sm. Mahmuda Bibi, wife of Golam Hossain Draji, by creed Musalman, by occupation land-holder of No. 8/1 Amratola Lane, in the town of Calcutta" should be written in place of "Sm. Zinnat Arah Zainab Begum *alias* Juhi Begum etc. etc.

That knowing that the particulars set forth in this petition are true to my information and belief, I put my signature to this verification to-day at 9 A. M. at my own house. Finis. Dated 6-4-31.

Mahmuda Bibi (in Urdu).

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No. 4.

In the 3rd Court of th Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 4. Petition on behalf of defendant No. 1 describing the heirs of the deceased plaintiff, filed on the 24th April, 1931.

No. 11—*Petition on behalf of defendant No.* 1 *describing the heirs of the deceased plaintiff.*

By

(Illegible).

In the Third Court of the Subordinate Judge at Alipore.

T. S. 17 of 1931.

Nawab Zinnat Ara Zaynab Begum *alias* Juhi Begum.. *Plaintiff,*

versus

Mirza Mohammad Said Ali and another ... *Defendants.*

The humble petition of defendant No. 1 in the above case,

Most respectfully sheweth :—

1. That in compliance with the orders of the Court, your petitioner begs to state that the plaintiff abovenamed died leaving the following heirs :—

(*a*)—Nawab Hashim Ali Khan of Deorhi Agamir Lucknow (U. P.) the husband of the deceased.

(*b*)—Your petitioner who is the brother of the deceased.

Under the circumstances your petitioner prays that necessary orders after notice may be passed in the case.

And your petitioner as in duty bound shall ever pray.

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In the 3rd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 3. Petition on behalf of Sm. Mahmuda Bibi for being substituted in place of the deceased plaintiff or added as a co-plaintiff, filed on the 7th April, 1931.

Schedule of amendment.

Plaintiff—

The words—"Sm. Mahmuda Bibi, wife of Golam Hossain Draji, by creed Musalman, by occupation land-holder of No. 8/1 Amratola Lane, in the town of Calcutta" should be written in place of "Sm. Zinnat Arah Zainab Begum *alias* Juhi Begum etc. etc.

That knowing that the particulars set forth in this petition are true to my information and belief, I put my signature to this verification to-day at 9 A. M. at my own house. Finis. Dated 6-4-31.

Mahmuda Bibi (in Urdu).

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No. 4.

No. 11—*Petition on behalf of defendant No.* 1 *describing the heirs of the deceased plaintiff.*

In the 3rd Court of th Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 4. Petition on behalf of defendant No. 1 describing the heirs of the deceased plaintiff, filed on the 24th April, 1931.

By

(Illegible).

In the Third Court of the Subordinate Judge at Alipore.

T. S. 17 of 1931.

Nawab Zinnat Ara Zaynab Begum *alias* Juhi Begum.. *Plaintiff,*

versus

Mirza Mohammad Said Ali and another ... *Defendants.*

The humble petition of defendant No. 1 in the above case,

Most respectfully sheweth :—

1. That in compliance with the orders of the Court, your petitioner begs to state that the plaintiff abovenamed died leaving the following heirs :—

(*a*)—Nawab Hashim Ali Khan of Deorhi Agamir Lucknow (U. P.) the husband of the deceased.

(*b*)—Your petitioner who is the brother of the deceased.

Under the circumstances your petitioner prays that necessary orders after notice may be passed in the case.

And your petitioner as in duty bound shall ever pray.

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No 5.

In the 3rd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 5. Petition on behalf of Mahmuda Bibi for issue of notice on Nawab Hashem Ali Khan heir of the deceased plaintiff, filed on the 24th April, 1931.

Nos. 12-12(a)—Petition on behalf of Mahmuda Bibi for issue of notice on Nawab Hashem Ali Khan heir of the deceased plaintiff.

Filed by
J. N. Mitra,
Pleader.

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In the Court of the Third Subordinate Judge of 24-Parganas at Alipore.

Partition Suit No 17 of 1932.

Mahmuda Bibi applicant, praying to be substituted as a plaintiff or added as a co-plaintiff etc., in place of the deceased Zinnat Arah Zainab Begum *alias* Juhi Begum ... ... *Plaintiff*,

versus

20

Mirza Mahammad Syed Ali ... ... *Defendant.*

Sheweth :—

The submission of the applicant Mahmuda Bibi in the above case is as follows :—That on the application of the petitioner praying to be substituted as a plaintiff or made a co-plaintiff in place of the deceased plaintiff the Court after hearing both the parties and in their presence passed an order on 17th April 1931 that the defendant being the uterine brother of the deceased plaintiff would supply the names and addresses of the heirs of the deceased, 30 if any, before this day, that is, 24th April 1931 and that after service of notices on them, necessary orders about substitution would be passed. Now, the defendant has, according to the order of the Court, supplied the names and addresses of the deceased plaintiff. Now, of the said two heirs, one having (already) been impleaded as a party and been prosecuting the present suit, according to the order of the Court, it is necessary that notice should be served on the other heir, that is, her husband, Nawab Hashem Ali Khan. So by making this petition it is prayed that an order be passed directing your petitioner to put in the notice forms and costs of a service of notice on the said heir and also directing that notice might be served on him and a 40 date may be fixed for the hearing of the present suit. This is the submission. 24-4-31.

Be it stated that the process-fee, being a Court-fee of Rs. 2, is put in herewith.

SRI JAGADGURU VISHWARADHYA
JNANA SIMHASAN JNANAMANDIR
LIBRARY.
Jangamwadi Math, VARANASI,
Acc: No, 4453.

SRI JAGADGURU VISHWARADHYA
JNANA SIMHASAN JNANAMANDIR
LIBRARY
Jangamawadi Math, Varanasi
Acc. No. 2037

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No. 6.

In the 3rd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 6. Petition on behalf of Mahmuda Bibi for being substituted in place of the original deceased plaintiff and for making Nawab Hashem Ali Khan a defendant in the suit, filed on the 19th May, 1931.

No. 16—Petition on behalf of Mahmuda Bibi for being substituted in place of the original deceased plaintiff and for making Nawab Hashem Ali Khan a defendant in the suit.

Filed by
B. Banerjee,
Pleader.

In the Court of the Third Subordinate Judge of 24-Parganas at Alipore.

Partition Suit No. 17 of 1931.

Mahmuda Bibi, applicant, praying to be substituted as a plaintiff in place of the deceased Zinnat Arah Zainab Begum *alias* Juhi Begum ... *Plaintiff*,

versus

Mirza Mohammad Syed Ali ... *Defendant.*

Application :—

The submission of the present applicant Sm Mahmuda Bibi, assignee of the original plaintiff in the above case is that there was an order to the effect that after service of notice on the heirs of the deceased plaintiff in the above suit, necessary orders would be passed about the petitioner being made a substituted plaintiff in place of the original plaintiff. Now among the heirs, defendant No. 1 is according to Mahomedan Law, one of such heirs and notice has been served on the other heir *viz.*, husband of the said deceased original plaintiff and the 'return' has been submitted but he has not intimated anything about the prayer of the petitioner (for being substituted?) in place of the original plaintiff in the above suit nor has he given any information as to his being himself included in the category of plaintiff. So by filing this petition it is prayed that necessary orders be passed directing this suit to be proceeded with on making the petitioner substituted plaintiff in place of the deceased original plaintiff in this suit and on including Nawab Hashem Ali Khan, husband and heir of the deceased original plaintiff in the category of defendants, along with defendant No. 1 in the present circumstances. Dated 19-5-31.

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No. 7.

In the 3rd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 7. Verified petition on behalf of Mahmuda Bibi for substituted service on Nawab Hashem Ali Khan, filed on the 13th June, 1931.

Nos. 18-19—Verified petition on behalf of Mahmuda Bibi for substituted service on Nawab Hashem Ali Khan.

Tiled by
J. N. Mitra,
Pleader.

"A"
(Illegible).

In the Court of the Third Subordinate Judge of 24-Parganas at Alipore.

Partition Suit No. 17 of 1931.

Mahmuda Bibi, applicant praying to be substituted in place of the deceased Zinnat Arah Zainab Begum *alias* Juhi Begum, as her assignee ... *Plaintiff*,

versus

Mirza Mohamad Syed Ali ... *Defendant.*

Application under Order 5 Rule 20 C. P. C.

The submission of Sm. Mahmuda Bibi Assignee of the deceased plaintiff in the above case is as follows:—That the applicant being the assignee of the original plaintiff in the above suit and having prayed to be made a substituted plaintiff or co-plaintiff in her place and thereafter the said plaintiff having died, an order was passed for service of notices on the heirs of the said deceased original plaintiff, that is, her husband and the defendant. Notice has now been served on the said defendant, and the husband of the deceased plaintiff being a resident of Baburchitola, Aga-mir-ka Dewri, Lucknow, District Lucknow, notice was caused to be served there through Court as well as by post, but the said Nawab Hashem Ali Khan with a view to avoid service of notice is, keeping out of the way; but so far this applicant has come to learn, she submits that Nawab Hashem Ali Khan has all along been residing at the said address and this is his last place of residence, and now the said person having avoided service of notice on him, it is necessary that substituted service should be made at the said place where he is known to have last resided. So by filing this petition with an affidavit it is prayed that necessary orders be passed for substituted service being made on the said Nawab Hashem Ali Khan at his above residense *i. e.*, at Baburchitola, Aga-mir-ka Dewri, Lucknow, District Lucknow, U. P. This is the submission. Finis. Dated 13-6-31.

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In the 3rd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 7. Verified petition on behalf of Mahmuda Bibi for substituted service on Nawab Hashem Ali Khan, filed on the 13th June, 1931.

Affidavit.

I, Bhabataran Pandit, son of Ananda Chandra Pandit, by caste Jogi, occupation service, aged about 34 or 35 years, of Judge's Court, Alipore, do hereby solemnly affirm and say as follows :—

1. That I am acquinted with the facts of the present case and look after this case of the petitioner. This is true to my knowledge.

2. That the particulars set forth in the petition annexed hereto and marked "A" are true to my information and belief. 13-6-31.

Bhabataran Pandit (in Bengali),
He is known to me,
Sarat Chandra Chattopadhaya,
Pleader's Clerk No. 194.

Solemnly affirmed before me this day.
(Illegible),
Commissioner of affidavits.
13-6-31.

3rd Sub-Judge's Court,
24-Parganas.

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No. 8.

In the 3rd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 8. Petition on behalf of Mahmuda Bibi for summonses on her witnesses, filed on the 12th August, 1931.

No. 35—Petition on behalf of Mahmuda Bibi for summonses on her witnesses.

Filed by
J. N. Mitra,
Pleader.

In the Court of the Third Subordinate Judge of 24-Parganas at Alipore.

Suit No. 17 of 1931 (Civil).

Mahamuda Bibi, applicant, praying to be substituted as plaintiff or co-plaintiff in place of Zinnat Arah Zainub Begum *alias* Juhi Begum ... *Plaintiff.*

Mirza Mahamad Syed Ali ... ... *Defendant.*

Petition.

The submission of Mahmuda Bibi, petitioner in the above case is as follows:—That it is necessary to cite witnesses, etc., on my behalf in the above suit; otherwise I shall suffer great loss. So by filing this petition it is prayed that necessary orders may be passed for service of summonses on the undermentioned witnesses cited by me and the said summonses on the witnesses may be directed to be handed over to me for service. This is the submission. Finis. 11th August 1931.

Schedule of witnesses.

Name.	Address.	Thana.
1. Babu Ganesh Chandra Dey, Attorney.	28, Cornwallis St.	Calcutta.
2. Babu Pannalal Mitra, Attorney.	70/1, Nivedita Lane, Bagh Bazar.	Calcutta.
3. Babu Bhupendra Nath Ghose, Pleader.	Judge's Court.	Alipore.
4. Sk. Wazir Ali ...	121, Circular Garden Reach Road, Kidderpore	Watgunj.
4 four persons only.		

Necessary orders be passed for service of the summonses on the aforesaid witnesses through me personally. 12-8-31.

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No. 9.

Nos. 23–35—Written statement on behalf of defendant No 1.

In the 3rd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 9. Written statement on behalf of defendant No. 1, filed on the 19th December, 1931.

Mirza Mohamed Said Ali,
By
Syed Ibed Imam,
Pl.

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In the Third Court of the Subordinate Judge, Alipore.

Title Suit No. 17 of 1931.

Must. Mahmood Bibi and another ... ... *Plaintiffs,*

versus

Mirza Mohamed Said Ali Bahadur and others ... *Defendants.*

20 Written statement of defendant No. 1.

1. That the present plaintiffs have no cause of action in this suit.

2. That the Court-fee paid is not sufficient.

3. That the suit is not maintainable in the present form.

4. That the plaintiffs' claim is barred by *res judicata* in view of the decree passed in Title S. No. 158 of 1920. of the 1st Subordinate Judge's Court, Alipore.

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5. That the plaintiff not having prayed for setting aside the Wakfnama is not entitled to any of the reliefs prayed for in this suit.

6. That no suit having been brought within 3 years from the date of the Wakfnama or from the date of the death of the Wakif, Prince Kamar Kader Bahadur, plaintiffs' claim is barred by limitation.

7. That the plaintiffs not being in possession of the properties in suit at any time within 12 years before the institution of the suit—plaintiffs' claim is barred by limitation.

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8. That the deceased pfaintiff not being in possession of the properties in suit the Court-fee paid is not sufficient and a partition suit is not maintainable at the instance of the added or the substituted plaintiffs.

9. That the defendant as Mutwalli of the Wakf estate and the Wakif being in adverse possession of the properties in suit for more than 12 years the original plaintiffs' rights, if any, were long ago extinguished.

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In the Srd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 9. Written statement on behalf of defendant No. 1, filed on the 19th December, 1931.

10. That the plaintiffs' claim is barred by estoppel, waiver and acquiescence. That since the property was made Wakf, the deceased plaintiff Juhi Begum having accepted the Wakf and having received the allowance from the Wakf estate according to the terms of the Wakfnama is not entitled to deny the Wakf character of the properties in suit or to claim a partition of the properties in suit.

11. That the suit is grossly undervalued both for the purpose of jurisdiction and of Court-fees.

12. That the suit is barred under Section 42 of the Specific Relief Act.

13. That the suit is bad for want of necessary and proper parties inasmuch as Mr. Mohamed Elias, Mr. M. M. K. Shirazi, the Port Commissioners, The Land Improvement Tribunal and others who are now in possession of the some of the properties in suit, have not been made parties.

14. That the plaint is not properly signed and verified, it is not the true plaint of the deceased plaintiff Juhi Begum and this defendant believes that the deceased plaintiff did not bring the present suit.

15. That this suit was never brought by or under the direction of the deceased plaintiff and she never authorised any person to bring the same on her behalf and she was never aware of the contents of this plaint. That the claim in the suit is false and has been made under the cover of the deceased plaintiff's name by one Hashim Ebrahim Salehji, the father of the added plaintiff Mahmooda Bibi.

16. That this defendant has been informed and believes it to be true that the Kobala alleged to have been executed by the deceased plaintiff Juhi Begum on 17th February 1931 is not a genuine, *bona fide* document for consideration. The recitals in the said document about the consideration and about her debts and other matters are all false. The deceased Juhi Begum was an illiterate Pardanashin lady completely under the influence of the substituted plaintiff Hashim Ali Khan and her sister's sons Hamid Ali Khan and Amjad Ali Khan, Hashim Saleji and Sheik Ujir Ali and other designing persons and was not a free agent at all at the time when the said document is alleged to have been executed and registered by her. This defendant does not admit that the said document was executed and registered by her and that this defendant further submits that the said document was never read over and explained to her and that she was never aware of the contents of the said document. The said document is also void on the ground of champerty. The added plaintiff Mahmooda Bibi is not entitled to continue the suit on the basis of the said Kobala. The deceased plaintiff has no right, title or interest in the properties in suit and that there was no necessity for assigning or transferring any interest on her part. This defendant has every reason to believe

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that the registration of the alleged conveyance was effected by false personation and that the present plaint is a forged document.

17. That save and except what is expressly admitted herein the defendant denies all the allegations of the plaint and puts the plaintiffs to strict proof thereof.

18. That regarding the allegations in para. 1 of the plaint this defendant states that Prince Kamer Kader Bahadur died on the 30th January 1919 and not on the 31st January, 1919 and that long before his death out of the immovable properties which he owned and possessed, he made Wakf by a registered Wakfnama, dated 16th June, 1917, the properties mentioned in the schedule annexed to the plaint and since the creation of the Wakf the said Prince was in possession of the same as Mutwalli.

19. That the allegations in para 2 of the plaint are false and misleading. The suit properties being all Wakf the heirs of the deceased had neither any share nor they ever claimed or could claim any share in the said properties. On the death of the said Prince the defendant came into possession of the suit properties as Mutwalli under the terms of the said Wakfnama.

20. As to the allegations in paras 3, 4, 5 and 6 of the plaint the defendant denies that at the time when Saheba Khatun became the concubine of the defendant's father, the defendant's father was infirm and old and in his dotage and was addicted to taking opium, cocaine and other like drugs which affected not only his bodily but also his mental powers and that gradually he was incapable of looking after his affairs and became feeble in mind until he died. This defendant also denies that Saheba Khatun taking advantage of the mental and bodily weakness of the Prince gradually began to exercise great and undue influence over him until she so completely dominated his will that the Prince was a mere puppet in her hands. The defendant emphatically asserts that the Prince was quite capable of looking after and managing his affairs and properties and that he was in full possession of his understanding at the time of the execution of the leases and the endorsement of the G. P. Notes and that his mental powers never became weak that he never became incapable of understanding and managing his own affairs. The defendant also states that the leases referred to having expired the statements about them in the plaint is irrelevant. The defendant further states that the Prince never abandoned his permanent family residence as alleged in the plaint, and 11, Rangalal Street, otherwise known as Rangmahal was his place of amusement which is close by his family residence and the Prince used to go there for purposes of recreation.

21. As to allegations in paras 7 and 8 of the plaint the defendant denies that any dower of his mother was due from his father. The defendant has been informed that the alleged demand of dower from the Prince was not made by Nawab Amir Begum and even if it was made as alleged, which the defendant denies, the defendant's mother has no hands in it and that it must have

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In the 3rd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 9. Written statement on behalf of defendant No. 1, filed on the 19th December, 1931.

been done by some designing persons as the substituted plaintiff Hashim Ali Khan, Mirza Mohammed Taqi, Hamid Ali Khan and others. This defendant emphatically denies that the Wakfnama dated 14th June 1917 was executed by the defendant's father to defraud and defeat the claim of the defendant's mother at the instance of Saheba Khatun or at any body else's instance. The said deed of Wakf was duly executed by the Prince of his own free will and accord to give effect to the pious and charitable intentions mentioned in the said document. The allegation that the Prince signed the said document in some places only is meaningless. The defendant also states that even if there be any letter of demand regarding dower in existence, which the defendant denies, this defendant's mother had no hand in it and that it must have been brought into existence by certain designing persons in whose clutches the said lady was at that time for creating some show of evidence. This defendant also denies that the Prince created a Wakf of all his immovable properties.

22. The allegations in paras 9, 10 and 11 of the plaint that at the time of the execution of the said deed of Wakf, the defendant's father was residing with Saheba Khatun, was completely under her control and influence and was mentally quite incapable of understanding or executing any document and that he had never any real intention to create Wakf and that he remained in proprietory possession and did never divest himself of the ownership and possession of the properties covered by the said deed and that the said deed of Wakf was prepared and completed and registered by Saheba Khatun and that the Wakf is a fictitious paper transaction are utterly false and baseless. On the contrary, the defendant asserts that the Prince was at the time quite mentally fit and capable of understanding did complete and execute the said document and register it after understanding fully the true nature and purpose thereof and in doing so only put into effect his long standing intention of creating a Wakf for pious and charitable purposes and that since the creation of the Wakf he divested himself of the ownership and possession of the properties covered by the Wakfnama and began to own and possess the same as Mutwalli till his death.

23. That the allegations in paras 12, 13 and 14 of the plaint, that no transfer of possession took place, that neither did the Prince nor any body after his death act upon the Wakf or that the Wakf is illegal inoperative and void and that the Wakf reserved unreasonable salary for himself and that after the death of the Prince his heirs became the owners according to their legal shares and remained in proprietory possession and enjoyment of the properties are utterly false and baseless. On the contrary, this defendant asserts that there was transfer of possession, that the Wakf was all along acted upon since its creation, that the Wakif did not reserve unreasonable salary for himself, that the deed of Wakf is perfectly genuine, legal and valid document and has been acted upon and is complete to all intents and purposes and that the heirs of the Prince never became owners and never had any sort of possession in the suit properties.

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24. That the allegations in para 15 of the plaint are false and misleading. The defendant's mother had neither $\frac{1}{4}$th or any share in the suit properties nor did she ever own, or possess any share thereof and as such neither the deceased plaintiff nor the defendant inherited any share from their mother in the same.

25. That the allegations in para 16 of the plaint are absolutely false and untrue. The deceased plaintiff was never in exclusive or joint possession of any of the suit properties. That as stated above of the suit properties some are in possession of the defendant as Mutwalli and some which are not included now in the Wakf are in possession of third persons who have not been made parties in this suit. The allegations as to joint or exclusive possession are entirely false.

26. That the allegations in para 17 of the plaint are false. The deceased plaintiff never jointly enjoyed the said properties with the defendant and never claimed any right whatsoever as such and never made any proposal for amicable partition and as such the allegations as to this defendant's avoiding and eventually refusing partition are absolutely all imaginary and false and have been invented for the purpose of this suit. The Wakfnama referred to in this paragraph was made by the defendant's father on 14th June 1917 and on and from that date the defendant's father owned and possessed the properties in suit as Mutwalli and after his sad demise on 30th January 1919 the defendant under the provisions of the said Wakfnama owned and possessed the said properties as Mutwalli and has since been dealing with and managing the same, and carrying out transactions with respect to the same as Mutwalli to the knowledge of all concerned including the defendant's mother and the deceased plaintiff who have all along acquiesced in the same. The claim for partition of the suit properties which are at present included in the Wakf, is, therefore, false and the same are impartible and inalienable.

27. That the alternative claim in paras 18 and 19 of the plaint for a decree for the recovery of possession and for *mesne profits* is also false, fictitious and barred by limitation for the reasons given in the foregoing paragraphs. The plaintiffs are not entitled to get any decree for partition or *mesne profits* in this case.

28. That with reference to para 21 this defendant begs to submit that the market value of the property in suit would not be less than 20 lacs and that for purpose of jurisdiction and Court fee the suit has not been properly valued and the added or the substituted plaintiffs *viz*, Mamuda Bibi and Hashim Ali Khan are not entitled to maintain this suit unless they pay *ad valorem* Court fees on the full value of suit properties.

29. That the deceased plaintiff Nawab Juhi Begum having had no right title or interest in the properties in suit, neither the substituted plaintiff

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In the 3rd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 9. Written statement on behalf of defendant No. 1, filed on the 19th December, 1931.

Hashim Ali Khan inherited anything nor the added plaintiff Mamuda Bibi acquired any title by reason of the alleged fraudulent assignment and the present plaintiff have therefore no *locus standi* to maintain this suit.

30. That the claim in the suit for setting aside the Wakf is barred by limitation.

31. That the suit under the facts and circumstances stated above should be dismissed with costs.

Verification.

I, Mirza Mahammad Said Ali Bahadur, the defendant do hereby solemnly state that the statement in paras 1, 16, 20, 27, 28 and 31 are true partly to my knowledge and partly to the best of my information and belief; those in paras 2 to 5, 14, 15 and 30 are true to my information and belief; those in paras 6 to 8, 10 and 13 are true partly to my knowledge and partly to my information while those in the remaining paras are true to my knowledge and I sign this to-day the 19th December 1931 at 123, Circular Garden Reach Road at 4 P. M.

Mirza Mohammed Said Ali.

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No. 10.

In the 3rd Court of the Subordinate Judge, 24-Parganas.

Nos. 36-38—*Issues in Title Suit No.* 17 *of* 1931.

Title Suit No. 17 of 1931.

No. 10. Issues, framed on the 7th January, 1932.

In the 3rd Court of the Subordinate Judge at Alipore, 24-Parganas.

Title Suit No. 17 of 1931.

Must. Mahmuda Bibi and another ... *Plaintiffs,*

versus

Mirza Md. Syed Ali ... ... *Defendant.*

Issues.

1.—Has the plaintiff any cause of action ?

2.—Is the suit maintainable in its present form and has it been properly instituted ?

3.—Is the suit barred by limitation ?

4.—Is the suit properly valued ?

5.—Is the Court fee paid sufficient ?

6.—Is the claim barred by *res judicata* ?

7.—Is the suit bad for defect of parties ?

8.—Is the suit barred by waiver, acquiescence and estoppel ?

9.—Whether the original plaintiff Juhi Begum had any right, title and interest to or in the property in suit, if so, what was her share in the said properties and whether she was in possession of it ?

10.—Is the deed of assignment in favour of Mahmuda Bibi by Juhi Begam genuine, valid and for consideration, if so, is Mahmuda Bibi entitled to be the sole plaintiff in the suit ?

11.—Is Hashim Ali Khan competent to remain in the category of plaintiff in the suit and is he entitled to any relief prayed for by the original plaintiff Juhi Begum ?

12.—Has the defendant Mirza Syed Ali acquired any title to the properties in suit by adverse possession ?

13.—What are the respective shares of Mahmuda Bibi and Mirza Syed Ali in the properties in suit ?

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In the 3rd Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 17 of 1931.

No. 10. Issues framed on the 7th January, 1932.

14.—Is Mahmuda Bibi entitled to the reliefs prayed for by the original plaintiff Juhi Begum and to get a decree for partition and separate possession of the same?

15.—Was the plaint not properly signed and verified? Was the suit not instituted by the original plaintiff or under her authority and with her knowledge of the contents thereof?

16.—Is the conveyance (Deed of Assignment) set up by the added plaintiff a genuine, *bonafide* document and for proper and full consideration? Was the said document executed by the original plaintiff with full knowledge of the contents thereof? Were the contents of the said document fully explained to the original plaintiff and did she understand them and the full effect thereof upon her? And had she any proper or independent advice in the matter? Was the said document executed under any undue influence, coercion or pressure of any kind? Is the said Deed of Assignment legally valid? If not is Mahmuda Bibi entitled to be added as a plaintiff?

17.—What was the physical and mental condition of the late Prince Kamar Kader Bahadur at the time of the execution of the alleged Wakfnama? Was he then possessed of full power of understanding and capable of managing his own business? Did the Prince execute the said document of his free will, knowing and understanding the full contents thereof? Or under extraneous and undue influence?

18.—Was the alleged Wakfnama executed by the Prince with the true and real intention of dedicating the properties in suit absolutely for pious religious and charitable purposes according to the provisions of the Mahomedan Law or as a cloak to defeat or delay the claims of his creditors?

19.—Did the Prince relinquish the properties and give up and transfer possession thereof at the time of the execution of the document? Were the salaries etc. reserved for the executant and his heirs reasonable? Was the Wakfnama acted upon by the Prince and his heirs since its execution?

20.—Is the Deed of Wakfnama a legally, valid and *bonafide* document?

21.—Did the original plaintiff demand partition from defendant 1?

22.—To what other reliefs, if any, is the plaintiff Mahumada Bibi entitled?

R. Gupta,
Subordinate Judge, 3rd Court,
24-Parganas.
7-1-32.

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No. 11.

In the 2nd Court of the Additional Subordinate Judge, 24-Parganas.

Title Suit No. 38 of 1932.

No. 11. Verified petition on behalf of defendant No. 1 for being examined on commission, filed on the 28th September, 1932.

Nos. 39-41— Verified petition on behalf of defendant No. 1 for being examined on commission.

By
Satis Ch. Ghose,
Pleader.

In the Court of the 4th(*sic*) Addl. Subordinate Judge of 24-Parganas.

T. S. No. (17 of 1931) / 38 of 1932

Sm. Mahmuda Bibee and others ... *Plaintiffs*,

versus

Mirza Syed Ali and others ... ... *Defendants*.

The humble petition of Mirza Mohammed Sayed Ali—defendant No. 1 in the above-named case,

Most respectfully sheweth :—

1. That your petitioner is the defendant in the above noted suit in which the plaintiff has prayed for partition of certain properties after setting aside a Wakf executed by your petitioner's father.

2. That your petitioner is suffering from paralysis and is completely bed-ridden and is unable to come to Court and give evidence.

3. That your petitioner's evidence is very material and it is necessary that a Commissioner should be appointed to take his evidence on commission.

Therefore your petitioner prays that your honour will be pleased to appoint a Commissioner to take down the evidence of your petitioner and pass such other order or orders as so your honour fit and proper.

And your petitioner as in duty bound shall ever pray.

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In the 2nd Court of the Additional Subordinate Judge, 24-Parganas.

Title Suit No. 38 of 1932.

No. 11. Verified petition on behalf of defendant No. 1 for being examined on commission, filed on the 28th September, 1932.

Affidavit.

I, Mokaram Ali son of late M. Wazid Ally aged about 35 years, residing at 11, Rangalal Street, solemnly declare and affirm as follows:—

1. That I am the Tahsildar of the defendant Mirza Mohammed Syed Ali and am looking after this case on his behalf. This is true to my knowledge.

2. That the said defendant is suffering from paralysis and is bed-ridden and is unable to attend Court. This is true to my knowledge.

3. That the evidence of the said defendant is material and it is necessary that his evidence will be taken on commission. This is true to my belief.

28th September, 1932.

M. Makramali,
Known to me,
Bimal Chandra Ganguli,
Pleader.

Solemnly affirmed before me this day of 28th September 1932.
(Illegible),
Sheristadar.

Addl. Sub-Judge's Court,
Alipore.

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No 12.

No. 93—Petition on behalf of the plaintiff Mahmuda Bibi for adjournment.

Filed by
J. N. Mitra,
Pleader.

In the 2nd Court of the Additional Subordinate Judge, 24-Parganas.

Title Suit No. 38 of 1932.

No. 12. Petition on behalf of the plaintiff Mahmuda Bibi for adjournment, filed on the 6th December, 1932.

In the Court of the 2nd Addl. Subordinate Judge of 24-Parganas at Alipore.

Title Suit No. 38 of 1932.

Sm. Mahmuda Bibi ... ... *Plaintiff,*

Mirza Mahamad Syed Ali and others ... *Defendants.*

Application

The submission of Mahmuda Bibi, plaintiff in the above suit, is as follows: That this day is fixed for the above suit. Now, the defendant has filed an application in the Court of the District Judge praying for a transfer of the above suit to the Court of the 4th Subordinate Judge of this place and for the said suit being tried along with Title Suit No. 8 of 1931 in the said 4th Court of the Subordinate Judge. The date for the hearing of the said application is fixed for 20th December 1932 next. Hence I could not be ready for the present case to-day. Therefore by filing this petition it is prayed that the case may be postponed to-day and on granting a month's adjournment, another date may be fixed for the hearing. This is the submission. Finis.

6-12-32.

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No. 13.

In the Court of the District Judge, 24-Parganas.

Misc. Judl. Case No. 249 of 1932.

No. 13. Copy of order *re:* analogous trial of T. S. 17 of 1931 / 38 of 1932 with T. S. 8 of 1931, dated the 20th December, 1932.

No. 94—Copy of order of the District Judge, 24-Parganas in Mis. Judl. Case No. 249 of 1932 re: analogous trial of T. S. 17 of 1931 / 38 of 1932 *with T. S. No. 8 of 1931.*

In the Court of the District Judge, 24-Parganas.

Present:—K. C. Nag, Esqr., M.B.E., Barrister-at-law.

Misc. Judicial Case No. 249 of 1932.

Re: Transfer of T. S. No. 17 of 1931 / 38 of 1932 of the 2nd Addl. Sub-Judge to the 4th Sub-Judge for analogous trial with T. S. No. 8 of 1931.

Mirza Mahammad Sayed Ali ... *Applicant,*

versus

Hashemali Khan ... ... *Opposite-party.*

Copy of order dated 20-12-32. Notice on the opposite-parties served. Their pleaders state that they have no objection to the proposed transfer and analogous trial. The petition is allowed. Let T. S. No. 17 of 1931 / 38 of 1932 be transferred to the file of the Subordinate Judge, 4th Court, for analogous trial with T. S. No. 8 of 1931 of Court.

K. C. Nag,
District Judge.

Copy forwarded to the Subordinate Judge, 4th Court, Alipore, for information and guidance.

By order.
H. Mukerji,
Sheristadar.

Alipore.
22-12-32.

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No. 14.

In the 2nd Court of the Additional Subordinate Judge, 24-Parganas.

Title Suit No. 38 of 1932
112 of 1932.

No. 14. Affidavit of Kasim Hossain Nanawati, *re:* filing of documents in the custody of Mahmuda Bibi, filed on the 4th February, 1933.

No. 97—Affidavit of Kasim Hossain Nanawati re: *filing of documents in the custody of Mahmuda Bibi.*

In the Court of the 2nd Additional Subordinate Judge, 24-Parganas.

4th

T. S. No. 38 of 1932.

T. S. No. 112 of 1932.

Mahamuda Bibi and another ... *Plaintiffs,*

versus

Mirza Mahamad Syed Ali ... *Defendant.*

Affidavit.

I, Kasim Hossain Nanawati son of Hossain Mahamad Nanawati by caste Mahamedan, aged 29 years, residing at 16/A, Blockman Street, Calcutta, do hereby solemnly declare:—

1. That I am the maternal uncle of the plaintiff Mahamuda Bibi and I look after this case on her behalf. This is true to my knowledge.

2. That the Deed of Assignment by virtue of which the plaintiff has acquired the share of the original plaintiff Zinnant Ara Jainab Begum *alias* Juhi Begum in the properties in suits and an acknowledgment receipt of the original plaintiff Juhi Begum in favour of the plaintiff Mahamuda Bibi have already been filed in Court in the above case. This is true to my knowledge.

3. That save and except the aforesaid document the plaintiff has not no other document in her possession and power. This is true to my information.

Kasim Hossain Nanawati.
Known to me.
Bhabataran Pandit,
Pleader's Clerk,
14-11-32.

Solemnly affirmed before me this 14th day of November, 1932.

(Illegible),
Sheristadar.

Addl. Sub-Judge's Court,
Alipore.

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No. 15.

In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 15. Verified petition on behalf of defendant No. 1 for taking down the evidence of Serajul Ulema Altaf Hossain Mufti Hafri on commission, filed on the 7th February, 1933 (with Medical certificate).

Nos. 44-47—Verified petition on behalf of defendant No. 1 for taking down the evidence of Serajul Ulema Altaf Hossain Mufti Hairi on commission (with medical certificate).

Filed by
Bimal Chandra Ganguli,
Pleader.

In the Court of the Fourth Subordinate Judge of 24-Parganas at Alipore.

Title Suit No. 112 of 1932.

Mahamuda Bibi and another ... *Plaintiffs,*

versus

Mirza Md. Syed Ali and others ... *Defendants.*

The humble petition of Mirza Md. Syed Ali defendant No. 1 in the abovenamed suit,

Most respectfully sheweth :—

1. That your petitioner is the defendant in the abovenamed suit in which the plaintiff has prayed for partition of certain properties after setting aside a Wakf executed by your petitioner's father the late Prince Kamar Kader Mirza Md. Abedali Bahadur.

2. That in order to prove the said Wakfnama your petitioner shall have to examine Serajul Ulema Altaf Hossain Mufti Hairi.

3. That the said Serajul Ulima Altaf Hossain Mufti Hairi is suffering from debility of heart, palpitation and vertigo and has been medically advised to take absolute rest and is therefore not able to come to Court and give evidence.

4. That the aforesaid witness's evidence is very material as he is the most important witness to prove the Wakfnama which has been challenged by the plaintiffs and therefore it is necessary that a Commissioner should be appointed to take his evidence on commission.

Therefore your petitioner prays that the Court may be pleased to appoint a Commissioner to take the evidence of the said witnesses on commission and pass such other orders as may be found fit and proper.

And your petitioner as in duty bound shall ever pray.

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In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No 112 of 1932.

No. 15. Verified petition on behalf of defendant No. 1 for taking down the evidence of Serajul Ulema Altaf Hossain Mufti Hairi on commission, filed on the 7th February, 1933 (with Medical certificate).

Affidavit.

I, M. Mokaram Ali son of M. Wazid Ali deceased aged about 35 years service-holder Mahammedan by faith residing at 123, Circular Garden Reach Road, P. S. Watgunge 24-Parganas do hereby solemnly affirm and declare as follows :—

1. That I am the Tadbirkar of defendant No. 1 in the above noted suit and as such I am aware of the facts of the said suit. This is true to my knowledge.

2. That the contents of the petition marked 'A' hereto annexed are true to my knowledge, belief and information.

M. Makram Ali,
6-2.

Known to me.
Bimal Chandra Ganguli,
Pleader, Alipore.

Solemnly affirmed before me this day the 6th February 1933.
(Illegible),
Commissioner of affidavit.

Sub-Judge's 4th Court,
Alipore.

(*Medical certificate granted by Md. Hossain*).

Health Association.
(Ward No. 26).

Garden Reach.
Dated, the 6th Feb. 1933.

President—Dr. M. M. Hossain Councillor.

Secretary—Dr. S. M. A. Khabir.

Ref. No.——

Certified that Serajul Ulema Mirza Altaf Hossain Mufti Saheb of Iron gate Road Metiaburj is suffering from debility of the heart, palpitation and vertigo. Physical exertion in his present condition of health is very harmful for him.

Md. Hossain L M. F. Beng.
Regd. Medical practitioner No. 2224.

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No. 16.

In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 16. Verified petition of objection on behalf of Mahmuda Bibi plaintiff to defendant No. 1's petition for being examined on commission, filed on the 16th February, 1933.

Nos. 48-49—Verified petition of objection on behalf of Mahmuda Bibi plaintiff to defendant No. 1's petition for being examined on commission.

Filed by
J. N. Mitra,
Pleader.

In the 4th Court of the Subordinate Judge of 24-Parganas.

Title Suit No. 112 of 1932.

Mahmuda Bibi ... *Plaintiff,*

versus

Mirza Syed Ali and others ... *Defendants.*

Petition of objection to defendant No. 1's prayer for his examination on commission.

The humble petition of Mahmuda Bibi plaintiff in the above case,

Most respectfully sheweth :—

1. That defendant No. 1 Mirza Mahamed Syed Ali is the principal contesting defendant in the above case.

2. That the defendant's age is according to his previous statement appears to be 57 years.

3. That your Honour's petitioner is informed that the said defendant is not so sick or infirm that he would be unable to attend Court on the date fixed or on any subsequent date and he holds conversation as usual and attends to his affairs and comes downstairs in his parlour in the ground floor.

4. That your Honour's petitioner has further come to know from reliable information that the said defendant is not at all bed-ridden now.

5. That if the said defendant be not examined in Court your honour's petitioner will be highly prejudiced.

In the circumstances your honour's petitioner prays that your honour would be pleased to

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In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 16. Verified petition of objection on behalf of Mahmuda Bibi plaintiff to defendant No. 1's petition for being examined on commission, filed on the 16th February, 1933.

reject the defendant's prayer for his examination on commission and to pass such other order as your Honour deems fit and proper.

And for which act your Honour's petitioner as in duty bound shall ever pray.

Affidavit.

I, Kasem Hossain Nanawati son of Hossain Mahamed Nanawati by caste Mahomedan, occupation business, aged 29 years residing at 16/A Blockman Street, Calcutta do hereby solemnly declare.

1. That I am a relation of the plaintiff and I look after her case. This is true to my knowledge.

2. That the statements made in this petition marked "A" and annexed herewith are true to my information and belief and I believe them to be true.

Kasim Hossain Nanawati.
Known to me.
Bhabataran Pandit,
Pleader's Clerk.
16-2-33.

Solemnly affirmed before me this day.
(Illegible),
Commissioner of Affidavit.
16-2-33.

Sub-Judge's 4th Court,
Alipore.

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No. 17.

In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 17. Verified petition of objection on behalf of Mahmuda Bibi plaintiff to the petition for the examination of Serajul Ulema Altaf Hossain Mufti Hairi on commission, filed on the 28th February, 1933.

Nos. 54–57—Verified petition of objection on behalf of Mahmuda Bibi, plaintiff, to the petition for the examination of Serajul Ulema Altaf Hossain Mufti Hairi on commission.

Filed by

J. N. Mitra,

Pleader.

In the Fourth Court of the Subordinate Judge of 24-Parganas.

T. S. No. 112 of 1932.

Mahmuda Bibi and another ... ... *Plaintiffs,*

versus

Mirza Mahamed Syed Ali and others ... *Defendants.*

The humble petition of Mahmuda Bibi, plaintiff in the abovementioned suit.

Most respectfully sheweth :—

1. That in the above suit the defendant Mirza Mahamed Saeed Ali has set up Wakfnama alleging that the properties to be partitioned are Wakf properties and that he is the sole Mutwali of the same.

2. That the said defendant had already applied for himself being examined on commission and got an order to that effect.

3. That the said defendant has again put in an application for the examination of one Serajul Ulema Altaf Hossain Mufti Hairi on commission in order to prove the execution of the said Wakfnama on the ground that the said Altaf Hossain is suffering from debility of heart, palpitation and vertigo.

4. That Your Honour's petitioner is very reliably informed that in Suit No. 120 of 1930 of this Court which was disposed of on 24th July 1932 the said witness was examined on commission at the time of trial on the ground that the witness was ill and unable to attend Court.

5. That when the witness was examined on commission, it was found that the said witness was hale and hearty and was not suffering from any illness.

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In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 17. Verified petition of objection on behalf of Mahmuda Bibi plaintiff to the petition for the examination of Serajul Ulema Altaf Hossain Mufti Hairi on commission, filed on the 28th February, 1933.

6. That on the same pretext this time too the said witness wants to be examined on commission and in support of his allegation a medical certificate has been filed from a L. M. F. and not from a qualified graduate in medicine of the Calcutta University.

7. That Your Honour's petitioner submits

(*a*)—That the said witness is an important witness in the case as the defendants want to get the alleged Wakfnama proved by him and as such for the ends of justice he should be examined in Court.

(*b*)—That the said witness is hale and hearty and quite fit to attend Court and that he attends to his business and goes hither and thither.

(*c*)—That the said witness is not at all entitled to be examined on commission.

In the circumstances Your Honour's petitioner prays that Your Honour will be pleased to reject the said application for examination of the witness Altaf Hossain on commission or if Your Honour deems it proper to get the witness examined beforehand by a qualified doctor whose cost Your Honour's petitioner is ready to deposit, if so directed, and to pass necessary orders thereafter in the matter.

And for which act Your Honour's petitioner as in duty bound, shall ever pray.

Affidavit.

I, Kassem Hossain Nanawati, son of Hossain Mahamed Nanawati, by caste Mahomedan, by occupation businessman, aged about 30 years, residing at 16/A, Blockmann Street, Calcutta, do hereby solemnly declare :—

1. That I am a relation of the plaintiff in the above case and look after this case and know the facts of the case. This is true to my knowledge.

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2. That the statements made in the petition marked "A" and annexed herewith are true to my information and belief and I believe them to be true.

Kasim Hosain Nanowati.

Dated, Alipore, 28-2-33.

Known to me.
Bhabataran Pandit,
Pleader's clerk.
28-2-33.

Solemnly affirmed before me this day.

(Illegible),
Commissioner of affidavit.
28-2-33.

Sub Judge's 4th Court,
Alipore.

In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 17. Verified petition of objection on behalf of Mahmuda Bibi plaintiff to the plaintiff for the examination of Serajul Ulema Altaf Hossain Mufti Hairi on commission, filed on the 28th February, 1933.

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No. 18.

No. 58—Petition on behalf of Mahmuda Bibi, plaintiff for time to bring stay order from the Hon'ble High Court.

Filed by
J. N. Mitra,
Pleader.

In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 18. Petition on behalf of Mahmuda Bibi, plaintiff for time to bring stay order from the Hon'ble High Court, filed on the 3rd March, 1933.

In the 4th Court of the Subordinate Judge of 24-Parganas at Alipore.

Title Suit No. 112 of 1932.

Sm. Mahmuda Bibi ... ... *Plaintiff,*

versus

Mirza Mahamed Syed Ali and others ... *Defendants.*

Application.

The submission of Mahmuda Bibi, plaintiff in the above case is as follows:—That the defendant in the above suit having prayed for the examination on commission of a certain person named Altaf Hossain Mufti in order to prove a document alleged to be a deed of Wakf and in spite of their being reasonable objections on the part of the plaintiff in regard thereto, the Court has passed an order for the examination of the said witness on commission and thereby the plaintiff in the present suit has suffered and is likely to suffer material loss and difficulties would arise in the way of a just decision being done. For this reason, the Hon'ble High Court is to be moved against the said order in order that the same may be set aside and for this time is necessary; and a 'stay order' is to be brought in order that the writ of the said commission may not be issued till the said application on my behalf is heard in the Hon'ble High Court. So by filing this petition it is prayed that without appointing a Commissioner or issuing the writ of commission for the examination on commission of the said witness, a month's time be granted to me for getting the said proceedings stayed on taking out a certified copy of the order aforesaid and necessary orders be passed directing that the writ of the said commission may not issue or the examination of the said witness on commission may not be held in the meantime. Submission. 3-3-33.

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No. 19.

In the High Court of Judicature at Fort William in Bengal.

Nos. 68–69—Copy of order of the Hon'ble High Court in Civil Rule No. 307 of 1933.

(Civil Revisional Jurisdiction).

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

Civil Revisional Jurisdiction.

Civil Rule No. 307 of 1933.

Present :

The Hon'ble Satyendra Chandra Mallik,

AND

The Hon'ble Robert Ernest Jack,

Two of the Judges of this Court.

No. 19. Copy of order, dated the 28th March, 1933.

Civil Rule No. 307 of 1933.

Issued by this Court

In the matter of stay.

Section 115 of the Code of Civil Procedure, 1908.

AND

In the matter of T. Suit No. 112/32 of the Court of the 4th Sub-Judge at Alipur (24-Parganas) Order, dated 28th February 1933 : And of *ad interim* stay of proceedings.

Sm. Mahmuda Bibi (Plaintiff) ... *Petitioner,*

versus

Mirza Mahammad Syed Ali of No. 123 Circular Garden Reach Road, Thana Watgunj (24-Parganas) (Defendant) ... ... *Opposite-party.*

Order.

Mallik, J. :—

This Rule is directed against an order made by the Subordinate Judge, 4th Court Alipore by which he allowed Serajul Ulema Altaf Hossain Mufti Hairi a witness for the defendant to be examined on commission. It appears that long after the issues had been framed in the suit, there was an application put in by the defendant on the 6th February 1933 for the examination of this witness on commission and when the plaintiff was given a copy of the application on the 22nd February 1933 an objection was raised by the plaintiff to such examination. The learned Subordinate Judge, however, passed the order mentioned above to which exception has been taken before us.

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In the High Court of Judicature at Fort William in Bengal.

(Civil Revisional Jurisdiction).

Civil Rule No. 307 of 1933.

No. 19. Copy of order, dated the 28th March, 1933

From the copy of the application that was given to the plaintiff it would appear that the prayer was made on the ground that the witness was not in a fit state of health and had been medically advised to take absolute rest. There was an affidavit along with this appeal but this affidavit did not clearly show whether the allegation as regards the health of the witness was true to the knowledge of the person who swore the affidavit. The application moreover does not show that a medical certificate was actually filed along with that application. The order which the learned Subordinate Judge passed allowing the witness to be examined on commission was, therefore, in my opinion an order hardly on any materials which could reasonably be acted upon. The prayer which the petitioner has made before us seems to me to be a very reasonable one and that prayer is that before the witness is allowed to be examined on commission a medical certificate is to be obtained from any well known doctor, preferably the Civil Surgeon of the 24-Parganas after he has examined the witness at the petitioner's costs.

I would, therefore, make the Rule absolute, set aside the order passed by the learned Subordinate Judge and direct that the witness be not allowed to be examined on commission unless a medical certificate is obtained from the Civil Surgeon of the 24-Parganas, whose costs will be borne by the petitioner before us. The petitioner will deposit in the Court below Rs. 64 within 10 days from this date, out of which the Civil Surgeon's fees will be paid. In default of payment the Rule will stand discharged.

If any balance remains after payment of the Civil Surgeon's fees it will be refunded to the petitioner. After the said deposit is made the Civil Surgeon of the 24-Parganas will be informed by the Court below that his fees are in deposit in Court.

We make no order as to costs in this Rule. Let this order go down without delay.

S. C. Mallik.

Jack J:—

I agree.

R. E. Jack.

The 28th March 1933.

Memo. No. D/10877.

Copy forwarded to the 4th Subordinate Judge at Alipur (24-Parganas) for information and guidance.

By order,
B K. Chakravarti,
for Deputy Registrar.

High Court,
Appellate Side.
The 4th April 1933.

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No. 20.

No. 105.—Letter from the Subordinate Judge, 4th Court, 24-Parganas to the Civil Surgeon, 24-Parganas for medical examination of Serajul Ulema Altaf Hossain Mufti Hairi.

No. 51.

To

The Civil Surgeon of 24-Parganas,

Dated 18th April 1933.

Sir,

I have the honour to say that in the marginally noted suit the defendant No. 1 was allowed by this Court to have his witness Serajul Ulema Altaf Hossain Mufti Hairi to be examined on commission on the ground that the said witness has been suffering from debility of heart, palpitation and vertigo and he has been medically advised to take absolute rest. The Hon'ble High Court was moved against this order and the said Court was pleased to pass an order to the effect that the witness will not be examined on commission unless a medical certificate is obtained from the Civil Surgeon of the 24-Parganas. I would therefore request you to be so good as to examine the witness at his residence at Iron Gate Road, Matiaburuz in presence of both the parties and to send a certificate to this Court after such examination embodying your opinion as to whether he is in a fit state of health to attend Court to give evidence. A sum of Rs. 64 is in deposit in this Court ont of which your fees will be paid on submission of your bill.

Title Suit No. 112 of 1932.
Sm. Mahmuda Bibi ... *Plaintiff,*
versus
Mirza Mahamad Syed Ali and others ... *Defendants.*

In this connection I beg to inform you that you will please intimate this Court the date and hour when you will be able to go for the purpose to the witness's residence referred to above so that the parties here may be directed to be present there at the time.

I have etc.,
(Illegible),
Sub-Judge.

In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 20. Letter from the Subordinate Judge, to the Civil Surgeon, 24-Parganas for Medical examination of Serajul Ulema Altaf Hossain Mufti Hairi, dated the 18th April, 1933.

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No. 21.

Nos. 1-6.—Deposition of Mirza Mahammad Syed Ali, defendant No. 1, taken on commission, dated the 25th April, 1933.

In the Fourth Court of the Sub-Judge, Alipore.

T. S. No. 112 of 1932.

Mamuda Bibi

versus

Mirza Mohd. Syed Ali and others.

The evidence of Mirza Mahamad Syed Ali is taken on commission on the 25th April, 1933 as pre-arranged. Babu Jatindra Nath Mitter, pleader appears for added plaintiff, Babu Amulya Krishna Mitter for the substituted plaintiff and Mr. Satish Chandra Ghosh, Advocate and Maulavi Ibne Imam, pleader for the defendant. Mr. Hasem Ibrahim Salaji, the father of the added plaintiff also attended. Mr. Kashem Hossain Nanabawaty, cousin of the added plaintiff also attended. Mr. Makram Ali, the Tahshildar of the defendant is also present. The witness is identified by Maulavi Ibne Imam, pleader.

The witness states on S. A :—

Examination.

My name is Mirza Mahamad Syed Ali, father's name Prince Kamar Kader Bahadur, age about 60. I reside here in this house. I am a Political Pensioner.

Q.—How are you at present ?

A.—I am ill (বেমার).

Q.—Of what are you suffering from ?

A.—Paralysis.

Q.—Which side has been attacked ?

A.—On the right side. (But the witness showing the left hand),

Q.—You said 'on the right side' but you showed the left side, how is this ?

A.—Not on the right side—I meant the left side. (He is showing the left side).

Q.—Who is treating you ?

A.—A Bengali Big Doctor—What is his name ?

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In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

Defendants' evidence (on commission).

No. 21. Mirza Mohammad Syed Ali defendant No. 1.

Q.—Where does he reside ?

A.—Raising the head, the witness says :—I cannot remember his name, he resides in Calcutta. Then the witness loudly says, Dr. Bidhan Roy.

Q.—Can you speak more distinctly ? (Objected to).

A.—No. The brain (দেমাক) is not right.

Q.—Will you be able to give evidence in this case ?

A.—No (নেই).

Q.—Why ?

A.—My brain (দেমাক ঠিক নেই) is not right.

The pleader for the defendant says that under the circumstances stated by the witness, he cannot be examined.

The pleader for the substituted plaintiff draws the attention of the learned Commissioner that the witness has been all along lying on his right side.

The pleader for the defendant says that he is so lying facing the Commissioner and the pleaders.

The pleader for the added plaintiff draws the attention of the Commissioner that the witness's answers were intelliglble and not altogether indistinct. At this stage the pleader for the defendant requests the Commissioner to adjourn the sitting *sine die.* He undertakes to examine the witness if he relies and recovers later on. The date fixed for hearing of the case is fixed on the 6th June next and there is yet time.

The pleaders for both the plaintiff state that as the sitting is adjourned at the instance of the defendants pleader, so the plaintiffs will be at liberty to cross-examine the witness in case if the witness is not further examined by his pleader on the date that will be fixed hereafter by the Commissioner.

The sitting is accordingly adjourned. The date will be notified hereafter.

Sarasi Lal Sarkar,
Pleader-Commissioner,
25-4-33.

A. K. Mitra,
Pleader for the substituted plaintiff.
25-4-33.

Syed Ibne Imam,
Pleader for the defendant.
25-4-33.

J. N. Mitra,
Pleader.
25-4-33.

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No. 22.

No. 73—Petition on behalf of the plaintiff, Mahmuda Bibi for sending a letter to the Civil Surgeon, 24-Perganas by registered post with acknowledgment due.

In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 22. Petition on behalf of the plaintiff, Mahmuda Bibi for sending a letter to the Civil Surgeon, 24-Parganas by registered post with acknowledgment due, filed on the 25th April, 1933.

Filed by
J. N. Mitra,
Pleader.

In the 4th Court of the Subordinate Judge of 24-Parganas at Alipore.

Title Suit No. 112 of 1932.

Sm. Mahmuda Bibi ... ... *Plaintiff*,

Mirza Mahamed Syed Ali ... *Defendant*.

Application.

The submission of Mahmuda Bibi, plaintiff in the above suit is as follows:—That a sum of Rs. 64 having been directed to be deposited for getting Altaf Hossain the witness cited by the defendant in the above suit examined by the Civil Surgeon of 24-Perganas, in accordance with the order of the Hon'ble High Court, the said sum has been put in; that in order to send a letter from the Court on 18th April 1933, last, to the said Civil Surgeon of 24-Parganas a letter was sent by the Court to the office of the Nazir of this place on 19th April 1933. Now on enquiries the plaintiff has come to know that the said letter has not reached the said Civil Surgeon of 24-Parganas. If indeed the letter in the name of the Civil Surgeon, 24-Parganas had actually been posted there could be no reason why it should not reach him. However, now according to the directions of the Hon'ble High Court the said act should be done; and in order to avoid the missing of the letter again, in the manner aforesaid, the plaintiff submits that it is necessary that the said letter should be sent to the Civil Surgeon of 24-Parganas by registered post with acknowledgment due and the plaintiff, by putting in the postage stamps for the purpose herewith, prays that necessary orders be passed for the said letter being sent to the Civil Surgeon of 24-Parganas, by registered post with acknowledgment due. This is the submission. Finis. 25-4-33.

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No. 23.

In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 23. Reply from the Civil Surgeon to the letter issued by the Court for Medical examination of Serajul Ulema Altaf Hossain Mufti Hairi, dated the 26th April, 1933.

No. 107—Reply from the Civil Surgeon to the letter issued by the Court for medical examination of Serajul Ulama Altaf Hossain Mufti Hairi.

Government of Bengal.

No. 800.

T. S. 112 of 1932.

From

The Civil Surgeon, 24-Parganas,

To

Babu Sarat Chandra De,
Subordinate Judge, 4th Court,
Alipore.

Dated 26th April, 1933.

Sir,

In reply to your letter No. 51, dated 18th April 1933, I have the honour to say that next Sunday, the 30th instant at 9-30 A. M. will suit me to examine the health of the witness Serajul Ulama Altaf Hossain Mufti Hairi at his residence and to request you to please make the necessary arrangement.

I have the honour to be,
Sir,
Your most obedient servant,
H. Maitra,
For Civil Surgeon,
24-Parganas.

Seen,
J. Maitra,
Pl.
26-4.

A. K. Mitra,
Pl.
26-4.

Seen,
Syeddhur Imam,
Pl.
26-4.

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No. 24.

In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 24. Letter from the Civil Surgeon 24-Parganas to the Subordinate Judge, 4th Court, 24-Parganas, dated the 2nd May, 1933.

No. 109—Letter from the Civil Surgeon, 24-Parganas to the Subordinate Judge, 4th Court, 24-Parganas.

Government of Bengal.

No. 836.

From

The Civil Surgeon, 24-Parganas,

To

The Subordinate Judge,
4th Court, Alipore.

Dated 2nd May, 1933.

Sir,

In accordance with your letter No. 51 of 18th April 1933, on Sunday, 30th April, I visited Serajul Ulema Altaf Hossain at his residence at Irongate Road, Matiaburuz.

I found him to be a well nourished, healthy looking individual of 48. The teeth are poor but there is no external evidence of Pyorrhoea. The muscle tone is poor and the muscles are flabby generally.

The pulse rate is undoubtedly high varying from 120 to 112 in the sitting posture and 108 to 104 in recumbency.

The heart however is not enlarged, the sounds are clear and there are no murmurs, nor is there any epigastric pulsation, though the right jugular is pulsating. The blood pressure is normal (132/85). The lungs are normal and there is no enlargement of either liver or spleen. All nervous reflexes are present and normal, and he is not anaemic. The conclusion is that the patient undoubtedly suffers from tachycardia though the cause of it is not apparent and I could find no evidence of the use of drugs likely to cause it.

I do not think this techycardia is of such a serious nature that it renders the patient unable to drive to the Court and give evidence in a sitting posture. I understand that he is able to carry out the duties of the Musjid.

I have the honour to be,
Sir,
Your most obedient servant,
A. Denham White,
M.B., B.S, F.R.C.S.,
Lt. Col., I.M.S.
Civil Surgeon, 24-Parganas.

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No. 25.

In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 25. Petition on behalf of the plaintiff for inspection of certain documents filed by the defendant, filed on the 31st July, 1933.

No. 75—Petition on behalf of the plaintiff for inspection of certain documents filed by the defendant.

Filed by
J. N. Mitra,
Pleader for the plaintiff,
Mahmuda Bibi.
31-7-33.

In the 4th Court of the Subordinate Judge of 24-Parganas at Alipore.

Title Suit No. 112 of 1932.

Sm. Mahmuda Bibi ... ... *Plaintiff*,

Mirza Mahamad Syed Ali ... *Defendant*.

Application—

The submission of Mahmuda Bibi plaintiff in the above suit is as follows: That the defendant in the above suit has filed some documents untimely. It is necessary that there should be an inspection of the said documents on my behalf. Otherwise there might be various difficulties at the time of the hearing and there is likelihood of loss being caused to me on that account. So by filing this petition it is prayed that necessary orders be passed allowing an inspection, on my behalf, of the documents filed on behalf of the said defendant, in the presence of the Sheristadar of this Court. This is the submission. Finis. 31-7-33.

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No. 26.

No. 126—*Report of the Pleader Commissioner.*

In the Fourth Court of the Subordinate Judge, Alipore.

T. S. 112 of 1932.

Nawab Zinat Ara Zainab Begum,

versus

Mirza Md. Syed Ali.

In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 26. Report of the Pleader Commissioner, dated the 23rd August, 1933.

Sir,

Being appointed Commissioner to take down the evidence of Nawab Mirza Md. Syed Ali, I held a sitting. But as the witness was ill, the commission was adjourned *sine die*. I served a notice upon the parties for further examination of the witness but the pleader for the defendant objects to the same and wants to fix a date after a month. I learn that the date for hearing of the suit has been fixed in October next and hence I pray that your Honour will be pleased to fix the date for returning the writ on the same day and to pass such orders as your Honour thinks fit and proper.

I have the honour to be,
Sir.
Your most obedient servant,
Sarasi Lal Sarkar,
Pleader-Commissioner.

Alipore,
23-8-33.

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No. 27.

No. 134—Report of the Pleader Commissioner.

In the Fourth Court of the Subordinate Judge, Alipore.

T. S No. 112 of 1932.

Nawab Z. A. Z. Begum,

versus

Mirza M. S. Ali and others.

In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 27. Report of the Pleader Commissioner, dated the 12th December, 1933.

Sir,

Herewith I beg to file the petition filed to the Pleader Commissioner and the Doctor's certificate dated 10th December 1933. The defendant No. 1 prays for adjourment *sine die*.

In the circumstances, I pray that your Honour will be pleased to re-issue the writ of commission or to pass such orders as your Honour thinks fit and proper.

I have the honour to be,
Sir,
Your most obedient servant,
Sarasi Lal Sarkar,
Pleader Commissioner.

Alipore,
12-12-33.

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No. 28.

No. 136—*Petition on behalf of defendant No.* 1 *before the Pleader Commissioner for adjournment of the commission* sine die.

In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 28. Petition on behalf of defendant No. 1 before the Pleader Commissioner for adjournment of the commission sine die, filed on the 12th December, 1933.

By
Syed Ibne Imam,
Pleader.

10

In the Court of the Fourth Subordinate Judge of 24-Parganas.

T. S. No. 112 of 1932.

Commissioner—Babu Sarashi Mohan Sarkar.

The humble petition of Mirza Mahammad Syed Ali, defendant No. 1 in the above-noted suit

20 Most respectfully sheweth :—

1. That your petitioner is still suffering from paralysis and has been advised to take complete mental and physical rest; the medical certificate dated 10th December 1933 granted to him by his attending physician Dr. B. C. Roy, M. D. etc. is filed herewith.

2. That to-day has been fixed for a sitting of the commission.

3. That under the circumstances noted above your petitioner is unable to 30 sit for his evidence.

Therefore your petitioner prays most humbly that you may be pleased to adjourn to-day's sitting *sine die* and pass such other orders as may appear fit and proper.

40

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No. 29.

In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 29. Petition on behalf of the plaintiff Mahmuda Bibi for substitution in place of the deceased defendants Nos. 1 & 2, filed on the 14th July, 1934.

Nos. 81-83—Petition on behalf of the plaintiff Mahmuda Bibi for substitution in place of the deceased defendants Nos. 1 and 2.

Mahmuda Bibi,
Filed by
J. N. Mitra,
Pleader.

10

In the 4th Court of the Subordinate Judge of 24-Parganas at Alipore.

T. S. No. 112 of 1932.

Mahamuda Bibi and another ... *Plaintiffs,*

versus

Mirza Md. Syed Ali ... *Defendant.*

20 Petition for substitution.

The humble petition of Sm. Mahmuda Bibi, plaintiff in the above-mentioned suit

Most respectfully sheweth :—

1. That in the above case Mirza Muhammad Syed Ali was defendant No. 1 as heir of Prince Kamar Kader Mirza Md. Abed Ali Bahadur and defendant No. 2 as alleged Trustee of the alleged Wakf, alleged to be created by Prince Kamar Kader Mirza Md. Abed Ali Bahadur dated 14th June 30 1917.

2. That the said Mirza Md. Syed Ali died on 11th June 1934 leaving behind him surviving his only widow Iffat Ara Hamidi Begum and two daughters (1) Jahanara Jafri Begum and (2) Keswa Ara Sadeka Begum and a minor son Mirza Muhammad Wahed Ali represented by his natural guardian and mother Iffat Ara Hamidi Begum as his heirs and that save and except the above-noted persons there is no other heirs of the said deceased.

3. That since the death of the said Mirza Syed Ali his widow Iffat Ara 40 Hamidi Begum is alleged to have been acting as trustee on behalf of her minor son Mirza Mohamed Wahed Ali of the alleged Wakf alleged to be created by Prince Kamar Kader Md. Abed Ali Bahadur.

4. That the aforesaid natural heirs and the alleged trustees are to be substituted in place of the deceased defendants Nos. 1 and 2 for the proper conduct of the suit and the plaint to be amended accordingly.

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In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 29. Petition on behalf of the plaintiff Mahmuda Bibi for substitution in place of the deceased defendants Nos. 1 & 2, filed on the 14th July, 1934.

In the circumstances your Honour's petitioner prays that your honour will be pleased to allow substitution of the following persons in place of the deceased defendants Nos. 1 and 2 and amendment of the plaint accordingly and to pass such other order or orders as your honour deems fit and proper.

And for which act of kindness your petitioner as in duty bound shall ever pray.

The following amendment is to be made :

In place of defendant No. 1 Mirza Mohammad Syed Ali the following names are to be written :—1(a) Iffat Ara Hamidi Begum widow of late Mirza Md. Syed Ali, 1(b) Jahanara Jafri Begum, 1(c) Keswar Ara Sadeka Begum, daughters of late Mirza Md Syed Ali, 1(d) Mirza Md. Wahed Ali minor son of Mirza Md. Syed Ali represented by his natural guardian and mother 1(a) Iffat Ara Hamidi Begum. All are Mahomedans, residing at 123 Circular Garden Reach Road, Thana Watgunj, District 24-Parganas and in place of defendant (2) Mirza Mohammad Syed Ali alleged trustee of the alleged Wakf alleged to be created by Prince Kamar Kader of 14th June 1934.

The following name is to be written :—

2(*a*).—Iffat Ara Hamidi Begum widow of late Mirza Md. Syed Ali alleged trustee on behalf of her minor son of the alleged Wakf, alleged to be created by Prince Kamar Kader Mirza Md. Abed Ali dated 14th June 1917 residing at 123 Circular Garden Reach Road, Thana Watgunge, District 24-Parganas.

Verification.

The statements contained in the petition are true to my information and belief and I believe them to be true. I affix my signature to this verification this day at my place.

Mahmuda Bibi,

Dated, Alipore.

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No. 30.

In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 30. Verified petition on behalf of the plaintiff Mahmuda Bibi for appointing Iffat Ara Hamidi Begum guardian of her minor son Mirza Wahed Ali, filed on the 14th July, 1934.

Nos. 84-85—Verified petition on behalf of the plaintiff Mahmuda Bibi for appointing Iffat Ara Hamidi Begum guardian of her minor son Mirza Wahed Ali.

Filed by
J. N. Mitra,
Pleader.

In the 4th Court of the Subordinate Judge of 24-Parganas.

T. S. No. 112 of 1932.

Mahumda Bibi and another ... *Plaintiffs,*

versus

Mirza Md. Syed Ali ... *Defendant.*

The humble petition of Sm. Mahmuda Bibi plaintiff noted above

Most respectfully sheweth :—

1. That the minor son Mirza Md. Wahed Ali of the deceased defendant No. 1 Mirza Md. Syed Ali is living with his mother Iffat Ara Hamidi Begum under her care and control in the same house at 123 Circular Garden Reach Road, Thana Watgunge, District 24-Parganas.

2. That the interest of the minor's mother is not adverse to that of the minor.

3. That the mother of the minor is the fit and proper person to be appointed *ad litem* guardian of the minor.

4. That it is necessary that the mother of the minor should be appointed *ad litem* guardian of the minor in the above case for the proper conduct' of the suit.

In the circumstances your honour's petitioner prays that the natural guardian and mother Iffat Ara Hamidi Begum widow of Mirza Md. Syed Ali deceased be appointed *ad litem* guardian of her minor son Mirza Wahed Ali in the above case and pass such other order or orders as your Honour deems fit and proper.

And for which act your Honour's petitioner as in duty bound, shall ever pray.

CC-0. Jangamwadi Math Collection. Digitized by eGangotri

In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 30. Verified petition on behalf of the plaintiff Mahmuda Bibi for appointing Iffat Ara Hamidi Begum guardian of her minor son Mirza Wahed Ali, filed on the 14th July, 1934.

Affidavit.

I, Kasem Haji Hossain Nanawati son of Haji Hossain Nanawati by caste Mahomedan by occupation trader, aged about 32 years, residing at 16/A Blockman Street, Calcutta, do hereby solemnly declare:—

1. That I am a relation of the plaintiff and I know the facts of the case. This is true to my knowledge.

2. That the statements contained in the petition annexed herewith and marked "A" are true to my information and belief.

Kasim Hajee Hoosain Nanawati.
Known to me.
Hridoy Nath Ghosh P. C. No. 73C.

Dated, Alipore.
5-7-34.

Solemnly affirmed before me this day.
(Illegible),
Commissioner of Affidavit.
9-7-34.

Sub-Judge's 4th Court,
Alipore.

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In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 31. Verified petition on behalf of the plaintiff for appointment of a Receiver, filed on the 20th September, 1934.

No. 31.

Nos. 127-136—Verified petition on behalf of the plaintiff for appointment of a Receiver.

Filed by

J. N. Mitra, Pleader.

In the 4th Court of the Subordinate Judge of 24-Parganas at Alipore.

Title Suit No. 112 of 1932.

In the matter of an application under Or. XL, Rule 1 of the Code of Civil Procedure in connection with T. S. 112 of 1932

and

In the matter of—Mahmuda Bibi, wife of Golam Hossain Orije of 8-1 Amratala Lane, Calcutta ... *Plaintiff*,

versus

1. Iffat Arah Hamidi Begum *alias* Bahu Begum, widow of Mirza Mahammad Syed Ali original defendant, since deceased,
2. Jahanara Jafri Begum *alias* Paya Bagum,
3. Qiswara Sadiqa Bagum *alias* Hinga Begum—daughters of Mirza Mahamad Syed Ali, aforesaid,
4. Mirza Mahamad Wahed Ali, minor son of Mirza Mahamad Syed Ali aforesaid, represented by his guardian and mother, the said Iffat Arah Hamidi Bagum—all residing at No. 123 Circular Garden Reach Road, Kidderpore, Thana Watgunj, District 24-Parganas ... ... *Defendants.*

The humble petition of the plaintiff above named

Most respectfully sheweth :—

1. That the aforesaid Suit (originally numbered T. S. No. 17 of 1931 but since re-numbered T. S. 112 of 1932) was instituted in January 1931 by Nawab Zinuat Arah Zainab Begum *alias* Juhi Begum against her brother late Mirza Mahamad Syed Ali aforesaid for partition of her share in the properties which she inherited along with her said brother from her father, late Prince Qamar Qadr Mirza Mahamad Abed Ali Bahadur and also from her mother Nawab Shah Bahu Amir Begum.

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In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 31. Verified petition on behalf of the plaintiff for appointment of a Receiver, filed on the 20th September, 1934.

2. That on the death of the said Prince Qamar Qadr Mirza Mahamad Abed Ali Bahadur on 31st January 1919—his widow, the said Nawab Shah Bahu Amir Begum became entitled to 0-2-0 as share, his son, the said Mirza Mahamed Syed Ali to 0-9-4 p. sbare and his daughter, the said Nawab Zinaut Arah Zainab Begum *alias* Juhi Begum to 0-4-8 p. share of all the properties left by the said Prince.

3. That on the death of the said Nawab Shah Bahu Amir Begum on 28th January 1928, her aforesaid 0-2-0 as. share in the said properties developed on her son and daughter aforesaid as her sole heirs the son getting 0-1-4 p. and the daughter getting 0-0-8 p. share respectively. so that the shares of the aforesaid son and daughter in the entire properties became 0-10-8 p. and 0-5-4 p. respectively, and the present suit was brought by the said Juhi Begum for partition of her said 0-5-4 p. share in the entire properties and in the alternative for recovery of possession thereof.

4. That during the pendency of the said partition suit, the said Zinaut Arah Zainab Begum *alias* Juhi Begum assigned to your petitioner, by a registered conveyance, dated the 17th February 1931, all her right, title and interest to and in the said 0-5-4 p. share of the properties for a sum of Rs. 15,788 due to your petitioner on the basis of two promissory notes executed in her favour by the said Juhi Begum and also in consideration of a sum of Rs. 100 to be paid each month as maintenance to the said Juhi Begum during her life, and that during the pendency of the aforesaid suit the said Juhi Begum died in April 1931.

5. That your petitioner is now prosecuting the present suit as plaintiff in place of the said Zinuat Arah Zainab Begum *alias* Juhi Begum deceased (along with her husband Nawab Hashem Ali Khan as co-plaintiff who was substituted in place of his said deceased wife) for partition of her said share in the properties aforesaid by virtue of the deed of assignment stated above.

6. That Prince Qamar Qadr Mirza Mahamad Abed Ali Bahadur father of the original plaintiff (the said Juhi Begum) was in his old age addicted to taking opium, cocain and other like drugs and in or about 1915 a woman of low rank and station by the name of Saheba Khatoon became his mistress and the said Prince began to live with her alone at No. 11, Garbari Lane, Kidderpore.

7. That under the influence of the said Saheba Khatoon on the Prince, the said Prince executed in 1916 to leases of almost all his properties in her favour and she also got him to endorse in her favour two G. P. Notes of the face value of Rs. 1,50,000.

8. That due to total estrangement between the said Prince and his wife, the said Nawab Amir Begum caused by the said Saheba Khatoon, the said Nawab Amir Begum made repeated demands of the said Prince for her dower

CC-0. Jangamwadi Math Collection. Digitized by eGangotri

money of Rs. 12,00,000 and finally on 3rd June 1917 she caused a letter of demand to be served on the Prince for the purpose.

In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 31. Verified petition on behalf of the plaintiff for appointment of a Receiver, filed on the 20th September, 1934.

9. That the said Saheba Khatoon, in order to defraud and defeat the just-claims of the said Nawab Amir Begum as also of other creditors of the said Prince, made it appear that the Prince had executed a document purporting to be a deed of Wakf of all his immovable properties, which was really a bogus and void document.

10. That at the time when the alleged deed of Wakf was said to have been written and registered the Prince was residing with and under the influence of his mistress, the said Saheba Khatoon, and was physically as well as mentally incapable of executing any such document.

11. That thereafter the said Saheba Khatoon set up a son alleging to be born of her by the said Prince, whereupon litigation was started by the said Mirza Mahamad Syed Ali to have it declared that the said child was not born of the said Prince's loin.

12. That tne said deed of Wakf was prepared, completed and registered by the said Saheba Khatoon without the Prince having any knowledge of the contents, true nature and purpose of the said deed, and was a wholly void and inoperative document.

13. That the alleged Wakf was also void as the Prince had never any real intention to create a Wakf and never intended to divest himself of the ownership and possession of the properties mentioned therein and the said Prince, in fact, remained owner and in possession and enjoyment of the properties till his death.

14. That thereafter his son Mirza Mahamad Syed Ali used to look after the estate left by the said Prince and as well as the estate left by his mother the said Nawab Amir Begum, on behalf of himself and his sister, the original plaintiff, the said Juhi Begum deceased.

15. That the said Mirza Mahammad Syed Ali was quite incompetent to manage the estate, and the income of the estate greatly diminished owing to his lack of supervision; the income as stated by him was about Rs. 1,200 per month but this was far below the income of the estate could have easily fetched had it been properly managed.

16. That the said Mirza Mahammad Syed Ali being himself incapable of managing the estate appointed one Mahammad Jafar Shiraji manager on a pay of Rs. 200 per month, several Darwans and one Ibu-i-Iman, pleader of the estate who all stayed in the same house (premises No. 11, Garbari Lane, Kidderpore in which the late Prince Qamar Qadr Mirza Mahammad Abed Ali Bahadur used to live with his mistress the said Saheba Khatoon) forming

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In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 31. Verified petition on behalf of the plaintiff for appointment of a Receiver, filed on the 20th September, 1934.

part of the alleged Wakf Estate without paying any rents therefor, which if properly let out would have fetched a decent income to the estate.

17. That the said Mirza Mahammad Syed Ali appears to have misappropriated the income and other profits of the estate, in consequence whereof a large sum of money amounting to over Rs. 30,000 as arrears of Municipal taxes and other liabilities of the estate have not been paid, and it further appears that the said Mahammad Syed Ali did not keep any accounts whatsoever of the said estate.

18. That some of the properties of the estate were acquired under the Land Acquisition Act for which a sum of about Rs. 30,000 was awarded as compensation; that the said Mahammad Syed Ali with the assistance of his aforesaid manager and pleader withdrew the said sum on the pretext of paying up the arrears of Municipal taxes as aforesaid, but the said sum was misappropriated by the said Mahammad Syed Ali and was never utilised towards the payment of the said taxes which are still outstanding as arrears, and no account books were produced showing an entry of the said sum therein.

19. That the said Mirza Mahammad Syed Ali realised rents of the estate and misappropriated the same without keeping any accounts thereof, and no regular and proper accounts have been filed showing actual collections and disbursements of the estate.

20. That in Suit No. 25 of 1924 in the Fourth Court of the Subordinate Judge, 24-Parganas, brought by one Mahammad Elias against the said Mirza Mahammad Syed Ali, a compromise petition was filed and the suit was decreed in terms of the said compromise, and in that suit the property which was the subject matter of the suit forming part of the Prince's estate or the alleged Wakf Estate was sold by the defendant, Mahammad Syed Ali to the plaintiff therein the said Mahammad Elias with the permission of the District Judge, dated the 15th September 1925 for a sum of Rs. 10,000 as mentioned in the said compromise, but no account was ever submitted by the said Mahammad Syed Ali showing an entry in any of the account books of the estate, and this big item of Rs. 10,000 though obtained with the sanetion of the Court was misappropriated by the said Mahammad Syed Ali.

21. That the said Mahammad Syed Ali died on 11th June 1934, and that since the death of his father late Prince Qamar Qadr Bahadur on 31st January 1919 up till the time of his death, he submitted some rough accounts of the estate from 1927 to 1930 in T. S. No. 8 of 1931 (which is also being tried along with the present partition suit and is also pending in this Court), but the said accounts were forthwith taken back on some pretext or other with an undertaking to re-file the same at an early date, but since then neither those nor any other accounts have again been filed in Court.

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22. That on the death of the said Mahammad Syed Ali, his legal heirs, *viz.*, Iffat Arah Hamidi Begum, his widow, Jahanara Jafri Begum and Quiswara Sadiqa Begum, his two daughters and Mirza Mahammad Wahed Ali his minor son represented by his guardian and mother, the said Iffat Arah Hamidi Begum have been duly substituted in his place as defendants in the aforesaid suits pending decision in this Court and the said substituted heirs are opposite-parties to the present partition.

In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 31. Verified petition on behalf of the plaintiff for appointment of a Receiver, filed on the 20th September, 1934.

23. That thereafter on the joint petition of the aforesaid two daughters and on another petition of the widow of the said Mahammad Syed Ali, this Court was pleased to pass orders on two different dates that the said two daughters and the widow be substituted in place of the said Mahammad Syed Ali as alleged trustees of the alleged Wakf Estate said to have been created by the late Prince Qamar Qadr Bahadur under circumstances stated above.

24. That your petitioner apprehends that under the circumstances stated above there would be utter mismanagement and confusion throughout the whole estate which would be ruined for non-payment of taxes and other legitimate liabilities of the estate already standing in arrears,

25. That the said two daughters on the one hand and the widow on the other are now trying on the strength of the orders passed in their favour respectively by this Court as aforesaid, to make separate collections and to be in exclusive enjoyment of the same, the two young daughters (aged about 20 and 22 respectively, one married and the other unmarried) with the assistance of the said manager and the estate pleader are trying to oust the widow from having any concern with the management of the estate or to be in possession of the same and the widow on the other hand is trying to exert her influence and to bring the whole estate under her own control and to enjoy the same exclusively—thus there being a scramble for possession of the estate which is now not in the possession of anybody, the said scramble should be prevented and as no one seems to be in actual lawful enjoyment of the property, a Receiver should be appointed for the benefit of all parties specially of the litigant who may prove successful.

26. That under the circumstances stated above it is just and convenient that a Receiver be appointed in your petitioner's case (T. S. 112 of 1932) for the preservation of the subject matter of litigation pending a judicial determination of the rights of the parties and for the benefit of all the parties concerned, otherwise the whole estate would in no time be ruined by the scramble aforesaid and your petitioner would suffer a heavy loss.

Your petitioner therefore prays that your Honour may be graciously pleased to order that a Receiver be appointed for the management of the estate left by Prince

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In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 31. Verified petition on behalf of the plaintiff for appointment of a Receiver, filed on the 20th September, 1934.

Qamar Qadr Mirza Mahammad Abed Ali Bahadur in order to preserve the subject matter of the partition suit (being Title Suit No. 112 of 1932) pending final adjudication of the rights of the parties and also to order that the said Receiver should continue in office till the disposal of the said Partition Suit and to pass such other or further order or orders as to your Honour may seem fit and proper.

And your petitioner as in duty bound shall ever pray.

Kasim Hazee Hossain Nanavati.

Explained by me.

J. N. Mitra.

Affidavit.

I, Kasem Hazi Hossain Nanabati, son of Hazi Hossain Nanabati, aged about 33 years, by caste Mahomedan, by occupation landholder, residing at No. 16, Blockman Street, Calcutta, do hereby solemnly affirm and say as follows :—

1. That I am a maternal uncle of the petitioner and look after her case and as such I am fully acquainted with the facts of the case.

2. That the statement made in paragraphs 1, 2, 3, 4, and 5 and 7 of the petition annexed herewith and marked "A" are matter of record and as such are true to my knowledge, those made in paragraphs 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, of the said petition are true to my information and belief and that the rest are submissions.

Kasim Hazee Hossain Nanavati.

Known to me.

J. N. Mitra,

Pleader.

Solemnly affirmed before me this day.

(Illegible),

Commissioner of Affidavit.

20-9-34.

Sub-Judge's 4th Court,

Alipore.

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(On the margin).

Received copy of this petition. The appointment of a Receiver seems to be the best remedy in the interest of all the parties.

A. K. Mitra,
Pleader for the substituted plaintiff,
Syed M. Hashim Ali Khan.
20-9-34.

Received copy.
K. Banerjee
for Iffat Ara Hamidi Begum for self and as guardian of Wahed Ali Mirza.
20-9-34.

Received copy and objected to.
(Illegible)
for the added defendants.
20-9-34.

In the 4th Court of the Subordinate Judge, 24-Parganas.

Title Suit No. 112 of 1932.

No. 31. Verified petition on behalf of the plaintiff for appointment of a Receiver, filed on the 20th September, 1934.

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No. 32.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suit No. 2 of 1934.

No. 32. Petition on behalf of the plaintiffs for amendment of the plaint, filed on the 8th December, 1934.

Nos. 179-180.--*Petition on behalf of the plaintiffs for amendment of the plaint.*

Mahmuda Bibi.
Syed Md. Hashim Ali Khan.
Filed by
Amulya Krishna Mitter,
Pleader.
Filed by
Jatindranath Mitra,
Pleader.

In the Court of the Third Additional Subordinate Judge of 24-Perganas.

Title Suit No. 2 of 1934.

Mahamuda Bibi and another

versus

Iffat Ara Hamidi Begum and others.

Petition for amendment of plaint under Order 6, Rule 17, C. P. C.

The humble petition of Mahmuda Bibi, Nawab Hashem Ali Khan, plaintiffs in the above case.

1. That in the above case there is an alternative prayer for recovery of possession of plaintiff's share.

2. That on a careful consideration of the facts of the case, your petitioners do not think it necessary to make any alternative prayer such as for recovery of possession.

3. That to determine the real question in controversy it is quite immaterial and unnecessary to retain any alternative prayer in the present case.

4. That Your Honour's petitioners submit that the alternative prayer for recovery of possession in prayer

(*b*) in the plaint and the statements made in para. 18 of the plaint or in other words para. 18 of the plaint should be deleted and that the plaint may be amended accordingly as detailed in schedule below.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suit No. 2 of 1934.

No. 32. Petition on behalf of the plaintiffs for amendment of the plaint, filed on the 8th December, 1934.

In the circumstances your petitioners pray that Your Honour will be graciously pleased to allow the amendment prayed for and pass such other order or orders as Your Honour deems fit and proper.

And your petitioners as in duty bound shall ever pray.

Schedule of Amendment.

"Prayer (*b*) and para. 18 of the plaint" to be deleted.

Verification.

That the statements made in paras. 1 to 4 in the petition are true to my information and belief and I believe them to be true. I sign this verification this day at my residence at Lucknow.

Syed Md. Hashim Ali Khan.

and I sign this verification this day at my residence at Calcutta.

Mahmuda Bibi.

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No. 33.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suit No. 2 of 1934.

No. 33. Petition of objection on behalf of Nawab Jehan Ara Jafri Begum and another to the plaintiffs' petition for amendment of the plaint, filed on the 11th December, 1934.

Nos. 181-182—*Petition of objection on behalf of Nawab Jehan Ara Jafri Begum and another to the plaintiffs' petition for amendment of the plaint.*

By
Syed Ibne Imam,
Pleader.

In the Court of the Third Additional Subordinate Judge at Alipore.

Title Suit No. 2 of 1934.

Mahamuda Bibi and another ... ... *Plaintiffs,*

versus

Iffat Ara Hamidi Begum and others ... *Defendants.*

The humble petition of Nawab Jehan Ara Jaferi Begum and Nawab Keshwar Ara Sadeka Begum in the above suit

Respectfully sheweth :—

1. That the plaintiffs have applied for amendment of plaint in T. Suit No. 2 of 1934.

2. That the said petition is not maintainable in law as the plaint has to be rejected under Order 7, Rule 11(c), C. P. Code.

3. That no amendment is allowable in law in the present circumstances when the defendants have acquired a valuable right.

4. That the petition is not properly verified and is not *bona fide.*

5. That it will seriously prejudice the defendants if the amendment prayed for is allowed.

Therefore your petitioner prays that the Court may be pleased to reject the petition for amendment with costs.

And your petitioner as in duty bound shall ever pray.

Received a copy of the petition.
A. K. Mitra,
Pleader for the substituted plaintiff.
11-12-34.

Received copy.
J. N. Mitra,
Pleader for added defendant.
11-12-34.

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No. 34.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suit No. 2 of 1934.

No. 34. Petition on behalf of the plaintiff Mahmuda Bibi for amendment of the plaint, filed on the 22nd December, 1934 (with Court's order thereon).

No. 183—Petition on behalf of the plaintiff Mahmuda Bibi for amendment of the plaint (with Court's order thereon).

Filed by

J. N. Mitra,

Pleader.

In the Court of the Third Additional Subordinate Judge, 24-Perganas.

Title Suit No. 2 of 1934.

Mahmuda Bibi and another ... ... *Plaintiffs,*

versus

Iffat Ara Hamidi Begum and others ... *Defendants.*

The humble petition of Mahmuda Bibi, plaintiff in the above suit

Most respectfully sheweth :—

1. That in the above suit while the hearing of the application of the plaintiff for the appointment of a Receiver in respect of the properties in suit commenced, at the instance of the contesting defendants, the question of Court-fee and amendment of plaint was taken up first and as such the Receiver matter was put off.

2. That after hearing both sides on the question of Court-fee and amendment of plaint, the Court has been pleased to allow the amendment of plaint on 21st December 1934 and directed the plaintiffs to pay as cost of Rs. 8 to the contesting defendants.

3. That the contesting defendants' pleader was requested to receive the cost amicably but on his expressing inability to receive the same, Your Honour's petitioner has deposited the said sum of Rs 8 allowed as cost to the contesting defendants in Court as per Chalan annexed herewith.

In the circumstances Your Honour's petitioner prays that Your Honour will be pleased to direct the amendment of the plaint as prayed for and to fix 2nd January 1935 for the hearing of the Receiver matter which had

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suit No. 2 of 1934.

No. 34. Petition on behalf of the plaintiff Mahmuda Bibi for amendment of the plaint, filed on the 22nd December, 1934 (with Court's order thereon).

been postponed at the instance of the defendants' pleader as stated above.

And for which act Your Honour's petitioner as in duty bound shall ever pray.

Dated 22nd December 1934.

(On the margin)

Let the plaint be amended as ordered. The Receiver matter may be put up on 5th January 1935 for hearing. Inform parties.

N. B.,
S. J.
22-12-34.

Seen.
No objection.

A. K. Mitra,
Pleader for plaintiff.

Hashem Ali Khan.
22-12-34.

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No. 35.

No. 190—Chalan on behalf of the plaintiff Mahmuda Bibi showing deposit of cost for allowing amendment of the plaint.

Chalan.

(Para 19, Rules of Account for Judicial Officers).

Part I—To be filled in at Court by the payer.

Name of person or persons on whose behalf the money is tendered.	Name of person or persons to whose credit the amount is to be placed in the Court's book.	Number of suit or date of Judicial decree or order (if any) under which the amount is tendered.	Particulars of receipts.	Amount tendered.	Remarks (if any).
				Rs. a. p.	
Sm. Mahmuda Bibi, plaintiff.	Jahanara Jafri Begum and Kiswara Sadeka Begum contesting defendant.	3rd Addl. Sub-Judge. T. S. No. 2 of 1934. Sm. Mahmuda Bibi and others, *versus* Iffatara Hamidi Begum and others.	Cost for allowing amendment Order No. 143, dated 21st December 1934.	8 0 0	Total rupees eight only.
				8 0 0	

By
Jatindra Nath Mitra,
Pleader.

Signature of person tendering the money.

(Illegible),
Signature of Chief Ministerial Officer.
22-12-34.

In the Court of the 3rd Additional Subordinate Judge, 24 Parganas.

Title Suit No. 2 of 1934.

No. 35. Chalan on behalf of the plaintiff Mahmuda Bibi showing deposit of cost for allowing amendment of the plaint, dated the 22nd December, 1934.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suit No. 2 of 1934.

No. 35. Chalan on behalf of the plaintiff Mahmuda Bibi showing deposit of cost for allowing amendment of the plaint, dated the 22nd December, 1934.

Part II—To be filled in by the Court or under its orders.

Registered number (1).	Registered date (1).	Account to be credited, whether civil suit deposits, fines or forfeitures, stamp duty and penalties, or miscellaneous or petty receipts.	Remarks.
3521	2-1-35.	Civil Deposit.	

(Illegible),
Signature of the Accountant.

To

The Cashier of the Court.

Received and credit the above sum if tendered to you before 3 P. M. to day/to-morrow.

(Illegible),
Signature of Judge in charge.

Dated 22-12.

Part III—To be filled in at Court by Cashier or at Treasury by Treasury Officer.

		Enter here number of the notes.
Received total rupees ...	8 0 0	Rupees eight only. Sd. (Illegible). 22-12-34

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No. 36.

No. 191—Petition on behalf of Nawab Iffat Arah Hamidi Begum for proceeding with the suit on the basis of the written statement filed by the deceased Mirza Md. Syed Ali.

Filed by
K. P. Banerjee.

In the Court of the Third Addl. Subordinate Judge of 24-Parganas at Alipore.

Title (Suit) No. 2 of 1934.

Sm. Mahmuda Bibi ... ... *Plaintiff,*

versus

Mirza Mahomad Syed Ali and others ... *Defendants.*

The submission of Nawab Iffat Arah Hamidi Begum mother and guardian on behalf of the minor Mirza Mahamed Wahed Ali Mutwali the substituted defendant in the above suit is as follows :—That I, on behalf of the said minor Mutwalli admit and accept the written statement that has been filed in the above suit on behalf of the deceased Mutwalli Mirza Mahamad Syed Ali. It is prayed that necessary orders might be passed for proceeding with the suit on behalf of the minor on the basis of the said written statement. Dated 21-3-35.

Permitted.
(Illegible),
S. J.
21-3-35.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suit No. 2 of 1934.

No. 36. Petition on behalf of Nawab Iffat Ara Hamidi Begum for proceeding with the suit on the basis of the written statement filed on behalf of the deceased Mirza Md. Syed Ali, filed on the 21st March, 1935.

CC-0. Jangamwadi Math Collection. Digitized by eGangotri

CC-0. Jangamwadi Math Collection. Digitized by eGangotri

No. 37.

No. 198—Petition of objection on behalf of the plaintiff Mahmuda Bibi to the petition of Syed Ashiq Hossain to be added as co-plaintiff as the assignee of plaintiff No. 1.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suit No. 2 of 1934.

No. 37. Petition of objection on behalf of the plaintiff Mahmuda Bibi to the petition of Syed Ashiq Hossain to be added as co-plaintiff as assignee of plaintiff No. 1, filed on the 23rd March, 1935.

Filed by
J. N. Mitra,
Pleader.

10

In the Third Additional Subordinate Judge's Court at Alipore.

T. S. No. 2 of 1934.

Mahmuda Bibi and another,

versus

Hamidi Begum and others.

20

The humble petition of the plaintiff Mahmuda Bibi, in the above case,

Most respectfully sheweth :—

1. That there has been an application put in by one Syed Ashiq Hossain alleging to be the assignee of some share in the alleged interest of Nawab Syed Md. Hashim Ali Khan a substituted plaintiff in the subject matter of the present suit.

30 2. That your honour's petitioner does not admit the said deed of assignment and put the party concerned to prove the same.

Under the circumstances the applicant has not got any legal right to be brought on the record on the ground of alleged assignment in his favour and your petitioner therefore prays that the application for substitution of the alleged assignee be rejected to avoid further complications in the trial.

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No. 38.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suit No. 2 of 1934.

No. 38. Petition on behalf of the plaintiff, Mahmuda Bibi for recasting certain issues and for adducing rebutting evidence to disprove the case put forward by the defendants as regards the validity and genuineness of the Wakfnama, filed on the 23rd March, 1935.

Nos. 199-200—Petition on behalf of the plaintiff Mahmuda Bibi for recasting certain issues and for adducing rebutting evidence to disprove the case put forward by the defendant as regards the validity and genuineness of the Wakfnama.

Filed by
J. N. Mitra,
Pleader.

In the Third Additional Court of the Subordinate Judge of 24-Parganas.

T. S. No. 2 of 1934.

Mahmuda Bibi and another,

versus

Hamida Begum and others.

The humble petition of the added plaintiff Mahmuda Bibi,

Most respectfully sheweth :—

1. That in the above suit that issue No. 15 as framed by the Court, on the supposition that plaint as filed by the original plaintiff was duly signed and verified by the original plaintiff and instituted under her authority and with her knowledge ; and the substituted plaintiff is estopped from questioning the legality and validity of the plaint but if he wants to raise any question as to the genuineness thereof the onus is on him to prove it affirmatively before further proceedings are taken regarding the trial of the suit.

Not necessary as they can be taken together. (Illegible).

2. That as regards issues Nos. 10 and 16 they practically cover the same matter therefore they should be recast and consolidated.

3. That as regards the validity and genuineness of the Wakfnama by which the defendants want to thwart the plaintiff's claim for a share by partition the onus is on the defendants in the first instance to prove its validity and genuineness and the plaintiffs pray that they may be given the liberty to adduce rebutting evidence to disprove the case put forward by defendants.

Under the circumstances your petitioner prays that necessary orders be passed on this petition.

Permitted.
(Illegible).
23-3-35.

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No. 39.

No. 201—Petition on behalf of the defendants for amendment of issue No. 15 (with Court's order thereon).

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suit No. 2 of 1934.

No. 39. Petition on behalf of the defendants for amendment of Issue No. 15, filed on the 23rd March, 1935 (with Court's order thereon).

By
Satish Ch. Ghose.

In the Court of the Third Additional Subordinate Judge at Alipore.

T. S. No. 2 of 1934.

Mahmuda Bibi and others ... *Plaintiffs,*

versus

Nawab Jahanara Jafri Begum and others, Mutwalli ... *Defendants.*

The humble petition of Nawab Jahanara Jafri Begum and others defendants in the aforesaid named suit,

Most respectfully sheweth:—

1. That issue No. 15 has not been correctly framed and that it should be framed as already suggested thus:—

"Was the plaint properly signed and verified?

Was the suit instituted by the original plaintiff or under her authority and with her knowledge of the contents thereof?"

Therefore your petitioners pray that the aforesaid issue No. 15 may be amended as stated above.

And your petitioners as in duty bound shall ever pray.

(On the margin).

As the onus lies upon the defendant to prove the allegations made by him in his written statement the issue as framed need not be changed. The petition is therefore rejected as groundless.

N. B.,
S. J.
23-3-35.

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No. 40.

Nos. 7-12—Deposition of Mr. Bhupendra Nath Ghose, witness No. 1 for plaintiff No. 2, dated the 23rd and 25th March, 1935.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiff No. 2.

No. 40. Mr. Bhupendra Nath Ghose, witness No. 1.

Examination.

Title Suits Nos. 1 and 2 of 1934.

Deposition of witness No. 1 for the plaintiff No. 2 taken on solemn affirmation on the 23rd day of March, 1935, before Mr. N. B. Banerji, Subordinate Judge, Additional 3rd Court, 24-Parganas.

My name is Bhupendra Nath Ghose, son of late Woopendra Nath Ghose, by caste Kayastha. My age is 30 years. I reside at 13, Sankaripara Road, Bhowanipore. My occupation is pleader practising in this Court.

I am a pleader of this Court. Seeing the plaint of T. S. No. 2 of 1934 witness says that he filed it on behalf of plaintiff Juhi Begum in local 3rd Sub-Judge's Court. Seeing the Wakalatnama witness says that he filed it along with the plaint in Court. I received the Wakalatnama from Ujir Ali constituted attorney of plaintiff Jinnat Ara Jainab Begum *alias* Juhi Begum. I saw his power of attorney at that time and also long ago in a previous suit. I acted for her also in Money Suit No. 89/29 or 30 of local 2nd Munsiff's Court. In that suit she was defendant No. 2. Defendant No. 1 of that suit was Mirza M. Saiyad Ali. On the plaint pages there are certain seal marks of plaintiff with her thumb impressions. Within the seal mark there are some Urdu writings in the hand-writing of Ujir Ali as stated by him. Before presenting the plaint I examined it and also the verification at its bottom and found it properly verified. I remember that during the pendency of Suit No. 2 of 1934 and during Juhi Begum plaintiff's lifetime there was an application made by Mahmuda Bibi for substitution of her name as an assignee of the interest of Juhi Begum in her place. I received a copy of it and granted a receipt. Admits receipt Exhibit 5. I made over the copy of the application to Ujir Ali constituted attorney of the plaintiff. I acted on behalf of plaintiff in that suit till her death. My power ceased with the death of the plaintiff. I used to receive instructions from her constituted attorney Ujir Ali for conducting the prosecution of that suit on her behalf during her lifetime. I received no instructions from him to oppose the application of Mahmuda Bibi. So far as I remember, I explained the contents of the application of Mahmuda Bibi filed in Court, of which was served upon her through him.

No cross-examination by added plaintiffs Nos. 1 and 1a.

Cross-examined by pleader for defendants Nos. 2b and 2c and 1b and 1c in Suit No. 2 of 1934:—Juhi Begum was a Pardanashin lady. She was

Cross-examination.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiff No 2

No. 40. Mr. Bhupendra Nath Ghose, witness No. 1.

illiterate. She never appeared in person before me. I received the plaint of Suit No. 2 of 1934 in my office within this court compound. I explained the contents of the plaint to plaintiff's constituted attorney Ujir Ali before I filed it in Court. I also asked him to intimate them to plaintiff. I explained the plaint to Ujir Ali both in my office and in my house at No. 13, Sankaripara Road at Bhowanipur. First Ujir Ali informed me that a plaint was being drafted in Lucknow. About 10 or 11 days after that he brought the draft typed on demi paper. Then it was typed on demi papers at his instance. The plaint was filed a week or 10 days after he brought the typed plaint to me. I explained the contents of the typed draft when he brought it to me. I again explained the contents of the plaint when it was prepared and typed on demi paper with reference to the draft. On both these dates plaintiff was not present. On enquiry from Ujir Ali I learnt that she was in Calcutta. I was so informed by him also when I filed the plaint in Court. I think that I was told by him that plaintiff was living then in Calcutta at her old address at Kidderpur. I never heard that that lady ever lived at house No. 132, Lower Chitpur Road I never went to plaintiff's place. As I thought it necessary I explained the plaint to her constituted attorney Ujir Ali in Hindusthani to inform her. I cannot write or read Urdu. But I can understand some words of Urdu language. The draft and the fair copy were written in English. I went through each paragraph of them and gave Ujir Ali an idea of it in abstract form I have seen him write in Urdu language. He brought the plaint to me and informed me that it had been explained to plaintiff both by him and her counsel at Lucknow. The lady was at Lucknow for some time. As Ujir Ali said so, I had no necessity to ask him about it. I had known him about a year before the date of institution of this suit, in connection with the suit instituted in 2nd Munsiff's Court at Alipur. I do not exactly remember who introduced him to me. I was told by him that plaintiff was at Kidderpur during the pendency of her suit and that she belonged to Oudh family and would never come out before me. So I had no necessity to enquire from her if the power was really given by her to Ujir Ali. When I filed the plaint it bore the seal marks and the thumb impressions. I was told that they were put by the lady as in the plaint in her former suit.

N. Banerji,
Offg. Sub-Judge.
23-3-35.

Further cross-examined :—I was present and attended the Court for some days during the hearing of the T. Suit No. 120 of 1930 in 4th Sub-Judge's Court, brought by Khatija Bibi against Mahamad Elias. I watched that proceeding as a third party. I do not remember if Ujir Ali was a witness in that suit for the plaintiff. I have not heard that he was a witness for Khatija Bibi in that suit. I work in the Sherista of my eldest brother Dhirendra Nath Ghose at Alipur but I generally sit in the Bar library. I have acted as a junior of Jatindra Nath Mitra, pleader for added plaintiff No. 2

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Mamoda Bibi. I do not know if Juhi Begum wrote to the Collector of 24-Parganas when she came to Calcutta. She was a political pensioner. I do not know if her statement was recorded by the Collector before her death. I never heard if Babu Jibanhari Mukherjee was engaged by the Collector to enquire if any suit was instituted in this Court in her name. When I got the plaint from Ujir Ali I found the verification in it. I most probably looked into the paras. mentioned in the verification. I did not verify the address of the lady mentioned in it. I was satisfied from the statement of Ujir Ali that the plaint had been verified. The seal marks in the plaint may be rubber stamp marks. I have not seen the lady's seal. I do not remember if I enquired why there were thumb impressions on the plaint with different ink. I do not remember who wrote the figures '29th' in the verification. Some of the writings within the seal marks were written in my presence. Seeing the receipt witness says that he got the copy of petition filed by Mahmuda Bibi on 8th April 1931. I cannot say the date when I made it over to Ujir Ali. I delivered it to Ujir Ali soon after receipt of the copy, when he came of his own accord. I did not send for him. He used to come now and then. I did not think it necessary to take any receipt from him when I delivered the copy to him. The lady died in the middle of April or May, 1931. I think Ujir Ali came to me after her death but I cannot say how long after her death. I had information from Ujir Ali within a week from the date of receipt of the copy that the copy of the petition was made over to the lady. I think I read the power of attorney executed by Juhi Begum in favour of Ujir Ali. I think it was in English. I think that I shewed it to the Sheristadar of 3rd Sub-Judge's Court and returned it to Ujir Ali. I think that the verification was signed by Ujir Ali. I saw the rubber stamp mark below the verification bearing his writings and his signature as constituted attorney of Juhi Begum. As the plaint was verified by both the plaintiff and her constituted attorney and as the Court Sheristadar accepted it I did not think it necessary to apply for permission of the Court. So far as I remember, the power of attorney was a registered document. I did not file it in Court. Amjadi my brother's clerk used to act for me in my works in Courts as a pleader then.

Re-examination.

Re-examined :—Witness identifies the power of attorney shewn by Ujir Ali to me. It is marked X for identification.

N. Banerji,
Offg. Subordinate Judge.
25-3-35.

Bhupendra Nath Ghosh,
Pleader.
25-3-35.

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No. 41.

Nos. 13-49.—*Deposition of Uzir Ali, witness No.* 2 *for plaintiff No.* 2, *dated the* 25*th March* 1935 *etc.*

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiff No. 2.

No. 41. Uzir Ali, witness No. 2.

T. Suits Nos. 1 and 2 of 1934.

Deposition of witness No. 2 for the plaintiff No. 2 taken on solemn affirmation on the 2 th day of March 1935, before Babu Nikunja Behary Banerjee, 3rd Additional Sub-Judge of Alipore.

Examination.

My name is Uzir Ali, son of Sheik Sabrati, by caste———. My age is 60 years. I reside at Rangalal Street, Pargana———, District 24-Parganas. My occupation is service.

I knew Juhi Begum. She used to appear before me and to talk with me. I was her Muktear. I was also her mother Amir Begum Saheba's Muktear. I had a registered Muktearnama. I have filed it to-day as called for. This is the Muktearnama made over to me after putting her thumb impression in my presence. It is marked Exhibit 6.

N. Banerjee,
Offg. Sub-Judge.
25-3-35.

Further examined:—I know Munne Aga *alias* Amjad Ali Khan. I know Nawab Hashem Ali Khan. He is husband of Juhi Begum. He is present in Court room now. He Nika-married Juhi Begum. I know Ludan Aga *alias* Hamidali Khan. He is son of sister of Juhi Begum. Juhi Begum was on good terms with her sister's sons Amjad Ali and Hamid Ali who are two brothers. The Am-muktearnama Exhibit 6 is registered. Juhi Begum was identified by Mahammad Saiyad Ali her brother before the Sub-Registrar. Her name was written by manager of the estate named Jafar. The latter is sitting in Court room now and is identified by witness. Before me Mahammad Taki, Hamid Ali Khan and Nawab Jan were the constituted attorneys of Juhi Begum. Juhi Begum used to receive a monthly pension of Rs. 90. I used to bring it from the Collector's office at Alipur to her. I used to look after her cases in Courts on her behalf. She used to get some money from Bara Banki in Oudh by cheque from Alipur Collectorate. I used to bring it from there on her behalf Juhi Begum deposited Rs. 3,000 from that money with her brother Saiyad Ali with a stipulation to pay interest at Rs. 30 per month. At another time a cheque came in respect of Bara Banki money. It was encashed by Saiyad Ali, and the money was retained by him including her

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiff No. 2.

No. 41. Uzir Ali, witness No. 2.

share. I signed that cheque on behalf of Juhi Begum. Saiyad Ali did not pay me latter's share of the money received by cheque. For this money Ganesh Babu Solicitor wrote a letter to Saiyad Ali on her behalf at my request; I filed the plaint in Alipur Court on behalf of Juhi Begum in this suit against her brother Mirza. M. Saiyad Ali under instructions of the lady. She put her thumb impressions on the plaint at its every page in my presence. I put my seal marks on it as her Am-muktear. I made over the Wakalatnama to her pleader Bhupen Babu. It bears her thumb impression and my seal mark. Identifies the plaint and the Wakalatnama. Juhi Begum used to live at house No. 11 Rangalal Street in Kidderpur near Calcutta then. It is her paternal house. The number of her house as 4 Rangalal Street mentioned in the verification is incorrect. It should be 11 as appears in the top of the plaint. Juhi Begum paid the Court fee stamps for the plaint. and other costs of the suit. She died at the house No. 11 Rangalal Street where she was living. I used to look after her suit since its institution on her behalf. Summonses were served upon the defendants on the identification of Munea Aga *alias* Amjad Ali Khan. After the institution of the suit Juhi Begum sold her interest to Mamuda Bibi by a deed of assignment Exhibit 7. Ganesh Babu the Solicitor acted for her. Juhi Begum signed the deed by putting her thumb impression in my presence. I also put my seal mark on it and signed it. Identifies his signature and Juhi Begum's thumb impression. Mahmuda Bibi was to pay Rs. 100 per month to Juhi Begum according to the deed. She paid her dues for 2 months at that rate. About 2 months after the date of execution of that deed Juhi Begum died. Mamuda Bibi made an application in Court for substitution of her name in her place. I do not remember if I got a copy of it or not. I got the information from Golam Hossain the husband of Mahmuda Bibi. I informed Juhi Begum of it after enquiring of her pleader about it but she did not say anything about her objection. Saiyad Ali resided at premises No. 123 Circular Garden Reach Road. His family is still living there. Saiyad Ali died in that house. Prince Kamar Kader also lived in that house, He left that house 4 years before his death and lived at house No. 11 Rangalal Street. He died at Ballygunj after staying for 1 or 2 months; mother of Juhi Begum was Nawab Amir Begum. She is dead. Prince Kamar Kader predeceased her. Amir Begum died at premises No. 123 Circular Garden Reach Road. She lived at premises No. 28 Circular Garden Reach Road opposite to that house when Prince Kamar Kader died. She used to come to that house frequently. Juhi Begum then lived with her. Saiyad Ali with his family then lived at house No. 123 Circular Garden Reach Road. Amir Begum used to get Rs. 200 as monthly pension. I used to bring it. I have been living in their house since I became 10 years old. Nawab Fakhr Muhal was the mother of Prince Kamar Kadir and wife of ex-King of Oudh. She and other ladies of the house used to appear before me. They never observed Purda before me.

N. Banerjee,
Offg. Subordinate Judge.
26-3-35.

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Further examined:—Ganesh Babu and Amjad Ali explained the deed of conveyance to the lady Juhi Begum before its execution by her. Mahmuda Bibi's attorney made over two pro-notes to the former Ganesh Babu Solicitor for Juhi Begum. Ganesh Babu then handed them over to Juhi Begum. The latter then made them over to me asking me to keep them. They are filed by me in Court. Identifies the two hand-notes. Juhi Begum executed the deed by putting her thumb impression at premises No. 132 Lower Chitpur Road. The deed was also registered there Amjad Ali used to live in that house with his family his mother-in-law and father-in-law. It is a two-storied house. He lived with them on the first-floor of that house. He rented that house. After four or five days after the registration of the deed Juhi Begum accompanied Amjadali to Sandila near Lucknow. Amjadali is a resident of that place. After staying there for about three weeks Juhi Begum returned to her residence at No. 11, Rangolal Street where she lived. I went to Ganesh Babu and told him that Juhi Begum would sell her interest to Mahmuda Bibi for which she had brought a suit and that she had sent me to him. Ganesh Babu asked me to bring a letter of authority from her so that he might act for her. He got a letter typed in his office and made it ever to me. I went to Juhi Begum and handed over that letter to her. Amjadali explained the letter to her. Then Juhi Begum put her cross-mark and thumb impression on that letter and asked me to put my seal mark thereon and handed it over to me. I then put my seal mark on it and made it over to Ganesh Babu. Witness identifies the letter marked Z. It bears the cross mark and thumb impression put by Juhi Begum in my presence. It bears also my seal mark. I do not recollect what Amjadali said when he explained the letter to Juhi Begum. The letter is marked Exhibit 10. The house No. 123, Circular Garden Reach Road is the residential house of Prince Kamar Kadar, his son Saidali and his family. After the death of Prince Kamar Kadar I took lease of 2 cottas of land out of his estate from his widow Nawab Amir Begum by a Patta. It was executed by latter through the pen of Hamidali Khan and sealed and was registered. The seal mark was put by Hamidali Knan in my presence under her instructions. He wrote her name also under her instructions. Amjadali explained the Patta to the lady in my presence. It was written in my presence in Bengali by a person whose name I do not recollect. The Patta is marked Exhibit 11 subject to objection of plaintiffs Nos. 1 and 1a and defendant No. 2.

Cross-examination for plaintiffs Nos. 1 and 1(a).

Cross-examined by Counsel for plaintiffs Nos. 1 and 1a:—I do not remember how long before the execution of the deed Amjadali came to Calcutta with Juhi Begum, Amjad's wife, sister-in-law and father-in-law from Sandila. I cannot say if it was 2 days, or two months or 2 years before. I did not accompany them from Sandila. When Juhi Begum came to house No. 11, Rangolal Street I was sent for by her through a maid-servant. She sent for me on the very day she came there. It was 4 or 5 or 6 days after that day that the deed of assignment was executed by her. I found Amjadali

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

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Evidence for plaintiff No. 2.

No. 41. Uzir Ali, witness No. 2.

there when I came there. Two or three days after that day Amjadali rented the house No. 132, Lower Chitpur Road and informed Juhi Begum of it. I was not present when he rented that house. I do not know who was its landlord. Amjadali informed me that he had rented the house for a month only at a rental of Rs. 100. Next day he fetched Juhi Begum to that house. From that day she used to go there almost on every day and return to house No. 11, Rangolal Street. Amjadali came with his family, mother-in-law and father-in-law and Juhi Begum first came to house No. 11, Rangolal Street from Sandila. Owing to iusufficient accommodation in that house he rented the house No. 132, Lower Chitpur Road and removed his family there to avoid congestion in that house. Juhi Begum used to accompany her maid-servant named Tunni to the house No. 132, Lower Chitpur Road when she went there. The same maid-servant was sent by her on her first arrival to call me. I cannot say if she is alive or dead. But she has left Calcutta. Juhi Begum used to frequent the house No. 132, Lower Chitpur Road for a month so long as she resided at house No. 11, Rangolal Street. Amjadali went away to Sandila with his family, father-in-law and mother-in-law and Juhi Begum when he left the rented house after a month. He went directly to Sandila without coming to house No. 11, Rangolal Street. Juhi Begum passed one or two nights at house No. 132, Lower Chitpur Road She went there with her articles from house No. 11, Rangolal Street and joined Amjadali on the day of their departure from Sandila. She took her maid-servant Tunni with her then. I live in the Bustee on Rangolal Street. My residence is at a distance of about 2 or 3 Rashis from house No. 11, Rangolal Street. I was in my residence all along. I never accompanied Juhi Begum to Sandila. I had been to Sandila and also to Lucknow. I do not remember when I went there. I cannot say even by guess how long ago I went to Sandila. I was then 25 or 30 years old. I am now 60 years old. Since then I did not go to Sandila. I went there only once on a trip of my own accord when I had been to Lucknow. I brought Amjadali up in my arms when he was a baby about 2 or 3 years old. I do not remember my age then. Amjadali was born at Lucknow. I had been in the house of the Prince Kamar Kader for many years when Amjadali came there about 2 or 3 years old. I cannot say what was my age then. I accompanied Nawabjan to Sandila when he went there from Lucknow. I cannot say where his residence was—whether at Sandila or at Lucknow. I do not know to whose house he took me at Sandila. I say that Juhi Begum went to Sandila because Amjadali informed me that she was accompanying him to Sandila. Lucknow stands on the way to Sandila. On her return to Calcutta Juhi Begum informed me that she came from Sandila. Therefore I say that she came directly from Sandila. I did not enquire from her if she had halted at Lucknow on her way from Sandila. I cannot say why Amjadali came with his family to Calcutta and lived there for a month. I went to Ganesh Babu's place 8 or 10 days before the date of execution of the deed of assignment. I went there as I was sent there by Juhi Begum to enquire when Ganesh Babu would come for registration of the deed of assignment to be executed by her.

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On arrival at Ganesh Babu's place I asked him when he would go. I had been to his place also 10 or 12 days before the date of execution of the deed. I do not remember if I had gone to his place any day before that day. Witness pauses for some five minutes to answer the question as to what talk took place between him and Ganesh Babu on the first day he met before the date of execution of the deed. I do not remember that talk. I went to Ganesh Babu first 5 or 6 days after the institution of this Suit No. 2 of 1934 by Juhi Begum. I went to him at the request of Juhi Begum. Next says, I do not remember the talk that took place between me and Ganesh Babu on that occasion. Two days after that date I again went to his place. I do not remember what talk took place between him and me on that day. I do not remember when I went to his place for the third time or what talk took place between him and me on that occasion. I do not remember if I went to his place for the fourth time. I went to his place at about the time of registration of the deed. It was 8 or 9 days after the third occasion. I asked Ganesh Babu on that occasion when he would come to house No. 132, Lower Chitpur Road and when he would want the Registrar to come there for registration of the deed. He informed me that he would go there with the registration officer at about 7 or 7-30 P. M. on that day. I had no other talk with Ganesh Babu on that day. I cannot say the name of the Registrar. I saw the Registrar when he came. (During the interval when the Court rose for tiffin the witness went out to make water as he says—(N. Banerji). I can sign my name only in Urdu. I do not know how to read or write Urdu. I do not know English or Bengali. Seeing the letter Exhibit 10 witness says that he cannot read it except his own signature therein. The thumb impression of this letter was put by Juhi Begum in my presence. So I know that it is the thumb impression of Juhi Begum. The cross mark on this letter was also put by her in my presence. I cannot distinguish her thumb impression and cross-mark from those of other persons. I do not remember the talks that took place between me and Ganesh Babu on that date when I brought the letter Exhibit 10 to him. On that very day I had received that letter from him. It was on 16th of the month—witness next says, I do not remember the date or month. I reached Ganesh Babu's office at 12 o'clock (noon). He gave me the type-written letter at about 2 P. M. Then I left his office at 2 P. M. with that letter for house No. 11, Rangolal Street and reached that house before 3 P. M. Within half an hour I returned from that house with that letter to Ganesh Babu's office.

To Court:—After arrival at house No. 11, Rangolal Street before 3 P. M. I handed over the letter to Juhi Begum in the presence of Amjadali telling her that Ganesh Babu had sent this letter saying that without power or authority from her he would not act for her. Then on the letter being explained to her by Amjadali she put her thumb impression and asked me to put my seal mark on the letter. I cannot say why I remember this and not the other talks that took place between Ganesh Babu and me before that day. I do not remember what talk took place between Amjadali and Juhi Begum on

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiff No. 2.

No. 41. Uzir Ali, witness No. 2.

that day. I do not remember what Amjadali said to her while explaining the letter. Just as Amjadali frequented the house No. 11, Rangolal Street during his stay at house No. 132, Lower Chitpur Road for a month Juhi Begum also frequented his house from the house No. 11, Rangolal Street during that time. There is no particular reason for it. I do not know what conversation Amjadali had with Juhi Begum on the date of execution of the deed of assignment. I do not remember what Juhi Begum said to him on that day. I do not remember what conversation she had with Ganesh Babu on that day. I knew Umda Begum of Bhagalpur. I was born at Bhagalpur. She was Saiyadali's 1st wife's mother's mother. She sent me to Nawab Fakur Mahal Begum and mother of Prince Kamar Kader. I was an orphan boy then as both my parents were dead. I did not see them. Umda Begum brought me up from the time when I was 6 days old. I do not know why she sent me to Calcutta instead of keeping me at Bhagalpur when I was 10 years old It is false that I was turned out by her and that I was accused of theft. I used to get Rs. 10 as salary from the prince's mother Nawab Fakur Mahal when I became 17 or 18 years old. Before that I did not receive any fixed salary but only food and clothes and some money for my pocket expenses. So long as Prince Kamar Kader lived my salary remained at Rs 10 per month. After his death his widow Amir Begum enhanced it to Rs. 20. After her death Juhi Begum used to pay me Rs. 20 a month in spite of the fact that she got Rs. 90 as pension per month. I cannot say how she managed it. Amir Begum had many other servants than me. Some of them were literate. I was the only servant of Amir Begum whom Juhi Begum retained and paid. Amir Begum's other servants were not retained. My duty was to bring Juhi Begum's pension, her purchased articles from the market and to look after her cases in Courts, *viz*, the present Suits Nos. 1 and 2 of 1934 and another suit in the 2nd Munsif's Court at Alipur. I do not remember the year in which I was appointed by her as her Am-Muktear before her mother's death. So long as Amir Begum was alive she used to pay my salary at Rs. 20 per month. After her death Juhi Begum paid it. I do not get any salary from Hashem Shailaji or from Khatija or Mahmuda Bibi. I do not know if I was examined in a suit brought by Khatija Bibi against Muhammad Ilias as a witness for her. I cannot say if that suit is dismissed. I was married when I was 5 or 6 years old at Bhagalpur. My 1st wife died leaving me and three children. I have married for the second time in Calcutta. She has not yet given birth to any child. Since the death of Fakir Mahal I live separately in a house of my own which is a tiled hut. A Bengali gentleman is my landlord in respect of the land where my hut is built. I do not know his name. Fakur Mahal Begum died 4 or 5 years before the death of Prince Kamar Kader. She used to observe Purdah strictly. Kamer Kader's wife also observed Purdah strictly. Juhi Begum also do so like her mother. Those persons did not appear before any other strangers than myself. Saiyadali's wife and daughters did not observe Purdah before me. It is false that my parents belonged to Kari caste. I do not know to what caste they belonged. During the life-time of Amir Begum

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Juhi Begum had no separate servant as she resided with her mother. In my absence her works used to be done by her mother's servants. When I was present I did her works. She had her maid-servant named Tunni from the life-time of her mother. She had no servant named Sidiakhi, so far as I know. I never heard of his name. Juhi Begum made over the handnotes to me because I was her constituted attorney. No other papers were made over to me then. I do not remember if any other papers of hers are with me. Since the delivery of the handnotes by her to me for keepiug them I retained them in my possession. I have not made them over to her heirs after her death. Saiyed Ali asked me not to enter his house. I do not remember when. I know no reason why he did so. I never committed any fault to him. He has forbidden his sepoys not to allow me to enter his house. I did not ask them why he did so. When I was forbidden I did not enter his house. This was from the lifetime of Juhi Begnm. I do not remember when the prohibitive order was given or how many years before her death or after the death of her mother. As the handnotes were deposited by Juhi Begum with me it did not occur to me efter her death that they should be made over to the Ammuktear of Saiyadali or Saiyadali or Juhi Begum's husband. I met the latter several times after her death.

Further cross-examined:—When I first mentioned to Juhi Begum the fact of Mahmuda Bibi's application for substitution of her name in her place she kept quiet. Golam Hossain husband of Mahmuda Bibi lived in Amratala Lane but I do not know whether he lives in the house of Hashem I. Shaileji. I do not if there is a house in Amratola Lane belonging to Golam Hosain. I know that Hashem Ibrahim Saleji lives in that lane. I never had been in his house there. I did not meet him yesterday or day before yesterday as I was in Court room on those days. I am attending Court in this case from 21st March 1935 when I was told that I would be examined. I saw him 1 or 2 days moving in the Court verandahs but I had no talk with him since 21st March. Jatin Babu pleader for the added plaintiff told me that I would be examined. I came to Court on 21st instant when I was told that my evidence would be necessary. I had been summoned. I attended Court on 21st instant of my own accord. I do not remember how many months ago or whether in this year I was summoned. I was not the Tadbirkar in the suit brought by Khatijan Bibi on her behalf against Muhammad Elias. Now I remember that I gave evidence in that suit for the plaintiff the wife of Hashem Ibrahim Shaileji. I do not know if I was disbelieved by Court in that suit. I do not know if my statement in that suit that the ladies of the family of Prince Kumar Kadir appeared before me was disbelieved by Court. Bismilla Begum was the daughter of wet(?) nurse of the Prince Kamar Kader. She was the foster sister of the latter. She lived at the house of that price so long as he was live. She used to receive Rs. 16 per month as an allowance from the Prince. She also lived with Saidali for sometime after the Prince's death. She had a son named Nawabjan. He is alive but not in Calcutta. He used to live with his mother. He was about 25 or 20 years

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old at the time of the Prince's death. Amir Begum used to appear before him then. She did not observe Purda before him till her death, She had four daughters two of whom died during infancy and two were married. The two daughters who died unmarried were Chumie Begum and Chhoti Begum. The two daughters who were married are named Bari Begum and Juhi Begum. Next says, Chunni Begum died after marriage. I do not remember what was her age then. When she was 16 or 17 or 20 years she was married. I do not remember how many years after her marriage she died. I no not remember the name of her husband. He belonged to royal family. I do not know if Bari Begum and Chunni Begum appeared before Nawabjan. Saiyad-ali's wife and daughters did not appear before Nawabjan. Next says, I do not remember it. I do not remember to have even seen them appear before Nawabjan. Juhi Begum used to appear before Nawabjan. I cannot say why Saidali's wife and daughters appeared before me and not before Nawabjan. Juhi Begum was of শ্যাওলা (neither dark nor fair) complexion. Suleman Mirza, son of Prince Mirza Jagi was the husband of Chunni Begum. Juhi Begum got her first monthly payment of Rs. 100 by postal M O. at Sandila according to the agreement entered into by Mahmuda Bibi. The money was not remitted to her in my presence. Juhi Begum acknowledged its receipt before me. The witness volunteers this answer. She told me about it when she returned from Sandila. The Counsel for added plaintiffs Nos. 1 and 1(a) declines to cross-examine the witness on issue No. 15 and files a petition to that effect.

Cross-examination for defendants Nos. 1(b) & 1(c).

Cross-examined by pleader for two daughters of Saiyadali:—I did not go to the house of Nilmani Babu pleader for added plaintiffs on Sunday last at 2 P. M. I did not see if Mokram saw me at his house then. I was then at my house. I did not meet Hashem Sailejee on that day. I came to know him first about 16 years ago when he used to come to houses Nos. 28 and 123, Circular Garden Reach Road. I do not remember if I served any summons in a suit brought by Hashem Shailaji against Juhi Begum and the heirs of her first husband in the High Court, I do not remember the suit. I had my Hajira filed in this suit before I was cited as a witness on behalf of Mahmuda Bibi. I do not remember if my Hajira was filed from 1931 in this suit. I was cited as a witness in March 1934. Next says, I do not remember it. I do not remember if I was cited as a witness in this suit either a year or 6 months or 2 months ago. Golam Hossain husband of Mahmuda Bibi had the summons served upon me, He is at Rangoon for the last 4 years. Then says, I do not remember who went to serve summons upon me. Some relation of Mahmuda Bibi went and served summons personally upon me. I had no talk with him then. He himself told me that he was a relation of Mahmuda Bibi. I did not see him either before or after the date of service of summons upon me. Mobarakali, manager of Omda Begum accompanied me from Bhagalpur. Before the marriage of Saiyadali with the granddaughter of Omda Begum there was no relationship between the two families. I was sent whether negotiations for marriage were going on. The marriage took place 1 or 2 years after I came to Calcutta. Saiyad

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Ali went to Bhagalpur for the marriage. It was not true that I was sent as a slave boy when Baniadi Begum was married with him. I cannot say why I was sent 1 or 2 years before the marriage of Mirza Saiyad Ali. Nawab Fakur Mahal used to live at house No. 123, Circular Garden Reach Road She died there. I do not remember in which year or how many years ago. I cannot say what was my age then. I cannot say if it was 22 or 23 years. House No. 28 has a compound wall with an open space. It is a two-storied house with three of its rooms marbelled. On the name of Fakar Mahal Amir Begum shifted her residence to that house. Juhi Begum also lived with her mother there. Nawab Hashem Ali married her. Within about 6 months from their marriage Prince Kamar Kader died. In house No. 28, Hashemali, Hamedali Khan, M. Taki Saheb, Amir Begum and Juhi Begum lived with many servants and maid-servants. I was not the Am-Mukhtar of Juhi Begum at that time. I used to draw her pension on the strength of Saiyad Ali's letter. As the pension office insisted on a power of attorney. I got an Am-Mukteernama from Juhi Begum. M. Taki Saheb, Nawabjan and Loudan Aga were her constituted attorneys before my appointment. In spite of those persons as her attorneys I used to work for Juhi Begum at that time such as drawing her pensions and bringing her purchased articles from the market. I used to stay at Rangolal Street at that time. I did not go to Ballyganj on the date of the death of the Prince Kamar Kader. I was then in Lucknow. At that time Nawab Hashem Ali and Juhi Begum were also at Lucknow. I do not remember if the Prince Kamar Kadar died on 30th January 1919. I came back to Calcutta 3 or 4 days after his death. I did not go to Ballyganj after my arrival in Calcutta. Nawab Amir Begum used to meet the expenses of the establishment at 28, Circular Garden Reach Road. Juhi Begum also used to give her pension to her mother. Hashem Ali Khan went away to Lucknow from premises No. 28, but I cannot say when Taki Saheb remained at that premises with Loudan Aga but up to which time I cannot say. Amir Begum died at premises No. 123, Circular Garden Reach Road. It would be about a month before her death that she came there. Taki had gone to Lucknow before that time. I do not remember if Loudan Aga came to premises No. 123 or had gone to Lucknow as he frequently used to go to Lucknow and come back. Juhi Begum also came with Amir Begum to premises No 123. After the death of Amir Begum premises No. 28 was locked up and subsequently let out to tenants. When Saiyidali removed his furniture to premises No. 123, house No. 28 was let out to Mr. Shera. Juhi Begum resided at premises No. 123 for some days after her mother's death. Then she removed to premises No. 11, Rangolal Street and lived there for about a year. My power of attorney was executed when Juhi Begum lived with her mother at premises No. 28, Circular Garden Reach Road. At that time the mother, sister and the son were on good terms After that Juhi Begum went away to Lucknow with Loudan Aga after taking permission from Saiyadali. I did not accompany her. I do not know if she went to Barabund from Lucknow. She came back to premises No. 11, Ranglal Street within a month.

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After a month she again went to Lucknow. I did not accompany her then also. I do not remember after how long time she returned to Calcutta. It cannot be 2 years. I cannot give any idea about it. It may be when she again went to Lucknow Loudan Aga accompanied her. Manager Jafar Shiraji is also residing at premises No 11, Rangolal Street for the last 5 or 6 years. It is a two-storied house. The part in which Juhi Begum resided is separately two-storied. In the portion in which the manager lives his family lives in the upstairs. His office is held in the downstairs. Next says his servants live in the downstairs but his office is held at premises No. 123. I cannot say whether this portion is the southern or western portion of the premises. The portion in which Juhi Begum is the eastern portion. It has two gates. I cannot say if one of the gates remains always closed. In the downstairs the rooms are occupied by Makram and some east Bengal people as tenants. Juhi Begum used to occupy the upper storey. There are doors connecting the two wings in the upstairs. When the doors are closed they become separate. When Juhi Begum died Saiyidali removed her furniture and let out that portion to tenants. I do not remember when he let it out to tenants. I did not see him remove the furniture of Juhi Begum Saiyedali was suffering from paralysis. I cannot say when he got that attack. I do not remember how many years ago I saw him for the last time. I was forbidden by him to enter premises No. 123, Circular Garden Reach Road when Juhi Begum went to Lucknow. It was about 4 years ago. I cannot say what was my age then. When his mother was alive I used to go and talk with him. After the death of Amir Begum I used to go there when Juhi Begum went there. I went to see Sayedali of my own accord also at that time. I was on good terms with him then. I did not enquire why he forbade my going to premises No. 123. When Juhi Begum returned from Sandila to Calcutta she died. I do not know if she had gone to Sandila from Lucknow. I cannot say if she went to Sandila when she went to Lucknow for the second time. I had no correspondence with her when she went away to Lucknow till her return to Calcutta. I have not got the money order papers to show receipt of Rs. 100 by M. O. by her at Sandila. Juhi Begum's 1st husband died when Prince Kamar was alive. His name was Humayun Kader. He was residing at Matiaburuz in a house known as Atabag. After his death Juhi Begum went to her mother and lived with her at premises No. 28, Circular Garden Reach Road. She never went to her first husband's house since his death. I do not remember if she ever lived at premises No. 3, European Asylum Lane. I do not remember if she ever lived anywhere else except premises Nos. 28 and 123, Circular Garden Reach Road or Atabag in Matiaburuz or 11, Rangolal Street. I do not know if Suit No. 1575 of 1918 in the High Court brought by Hashem Ibrahim Saileji against Juhi Begum and others. I do not remember if the statement made in the petition, dated 8th February 1919 that your petitioner despatched one Ujir Ali to Alipur for the purpose of causing the said writs to be served on the other defendants but owing to his being attacked with influenza now raging in Calcutta and in its suburbs he was prevented from going over to Alipur for the

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purpose or informed your petitioner of the fact of his illness is correct or not.

N. B. Banerjee,
Offg. Sub-Judge.
28-3-35.

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Further cross-examined :—I remitted Juhi Begum's pension to her by M. O. only once from Calcutta. She used to receive her pensions from me when she was in Calcutta. I do not remember the date of remittance of her pension by M. O. I do not remember how long ago. I do not remember the whereabouts of the M. O. receipts. I never took any receipts from her when I paid her pensions. Nobody took any receipts from me. I do not remember when when I last drew her pension. I did not withdraw her pensions for 2 months, February and March 1931. I do not know if Taki Saheb wanted to sell Juhi Begum's share of her Wasika money. I do not know if there was an enquiry made by the Collector at the instance of the Wasika office at Lucknow. I do not know if Prince Shanshah Mirza made the enquiry. I cannot say if pension of Juhi Begum was stopped on his report. I went to the pension office to draw the pension of Juhi Begum for February 1931 but was told that the pension would not be paid to me. I did not enquire why her pension should not be paid to me although I was her Am-muktear. I made no attempt whatever to withdraw the money. I took no steps to ascertain why her pension was stopped. I do not know if her pension for February 1931 was paid to anybody else as I was not here then. Then says, I was here then. I did not go to withdraw her pension for March, 1931 because I was told previously that her pension was stopped. I informed Juhi Begum when she came to Calcutta that her pension for February 1931 was stopped. It is not true that her pension was stopped because her whereabouts were not known, I do not know if she wrote to the Collector for her pension. When she came to premises No. 11 Rangalal Street and was told that her pension was stopped she got it through Shanshah Mirza. I do not remember if she got her pension in April 1931. I cannot say, why the pension was not drawn through me. I was forbidden to enter that house 3 or 4 days before her death. So I did not go when she died. Shanshah Mirza forbade me to enter that house when I was going to it. I did not question him why he did so, saying that I was her constituted attorney. It may be that Juhi Begum complained to the Collector but I do not know it. I cannot say why Shanshah Mirza came to that house. Saiyed Ali did not forbid me to enter premises Nos. 11 Rangalal Street and 123 Circular Garden Reach Road. I do not know Hanifa Bibi. I do not remember if I gave evidence on her behalf. I do not know if Hanifa Bibi is daughter of Hashem Ibrahim Sahileji. In Alipur 2nd Munsif's Court she brought a suit against Saiyed Ali and Juhi Begum. I do not remember its number. I gave evidence in that suit on behalf of Hanifa Bibi. I said in that suit that sum of Rs. 633-4-5 pies was received by Saiyed Ali by a cheque which was also cashed by him. Saiyedali and I. B. Imam also gave evidence in

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that suit. That suit was decreed against Juhi Begum and not against Saiyed Ali. I did not look after that suit. Hashem Ibrahim Shailaji also gave evidence in that suit. The money related to Jagir of Bara Banki. I had drawn the money due for the previous year. Next says, I do not remember it. It is true that I drew the money once. I do not remember if I said in that sult that the income for the year previous to the year in suit was received by Saiyad Ali and myself on behalf of defendant No. 2 or I made over defendant No. 2's share of the money to plaintiff In answer to the question whether because of this false suit the witness was forbidden by Saiyed Ali to enter houses Nos. 11 Rangalal Street and 123 Circular Garden Reach Road witness says that he was forbidden to enter the latter house only. I do not remember against whom the claim was made in that suit. I do not know if Juhi Begum filed her defence in that suit. I do not know Ibrahim Ahmad Shailaji I never heard of his name. I do not remember if he ever came to premises No. 11 Rangalal Street. Seeing the written statement of Juhi Begum in former suit witness admits his signatures and seal marks therein but cannot say what it is and whose thumb impression are borne by it. Witness' signatures and seal marks in that written statement are marked Exhibits C to C3. I do not remember if any pleader was engaged by Juhi Begum in that suit. Seeing the Wakalatnama filed in that suit witness admits his signature and seal mark. Even after the Wakalatnama and the endorsement on its back are explained to the witness the latter does not remember if he executed the Wakalatnama and made it over to Bhupen Babu pleader. The signature and seal mark are marked Exhibit C4. I do not remember anything about that suit. I do not remember if time was taken by me for the filing of written statement on behalf of Juhi Begum. I do not remember how my signatures and seal marks appeared in some papers filed in that suit as it was long ago. I am not surprised to see their appearance in such papers. I was present when sum of Rs. 3,000 was deposited with Saiyed Ali. Rs. 9,000 came from Bara Banki to pension office at Alipur by a cheque in the names of Juhi Begum and Saiyad Ali. That cheque was cashed by the latter in my presence. I do not remember if I signed that cheque also. Saiyad Ali came to premises No. 123 Circular Garden Reach Road with that money. I do not remember how long ago it was. Amir Begum was then alive. She and Juhi Begum came from No. 28 to No. 123 Circular Garden Reach Road. I do not go with them when they went upstairs. I did not hear what conversation they had upstairs. Juhi Begum told me that Saiyad Ali would pay as interest to her Rs. 30 per month. She told me this when she returned to premises No. 28 Circular Garden Reach Road. Amir Begum and servants and I were present then. Saiyed Ali used to draw pension at Rs. 300 per month. There was nothing in writing to show that interest would be paid. I gave evidence in T. S. No. 120 of 1930 brought by Khatija Bibi against M. Elias, on behalf of her. I do not remember if I said in my deposition in that suit that Juhi Begum had money deposited wither with the manager or with Ibni Imam. I do not remember if it is true or false. Juhi Begum had Rs. 1,200 in deposit with Saiyad Ali. It is still in deposit. I do not remember if I said in

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any previous deposition that the money was in deposit either with the manager or with Ibni Imam. I heard Juhi Begum say that Saiyad Ali had retained Rs. 3000 in her share with him out of Rs. 9,000 promising to pay interest per month. These receipts bear my signature but I do not know what is written in them. They were shewn to me when I was examined in the previous Suit No. 120. The signatures in the receipts are marked Exhibits D and D1. I granted the receipts after receiving interest. This signature on this paper is mine. It is marked Exhibit D2. I put my signature on this paper at the request of the manager, Jafar Shiraji when he promised to me money on account of interest on the paper being signed by me. I got Rs. 30 from him on signing that paper. Amir Begum had her seal. These receipts bear her seal marks. The seal marks are marked Exhibits E to E10. The witness volunteers that the seal was(*sic*) Saiyedali after her death. I used to get the receipts signed by Juhi Begum without reading them as I could not read them and without having them read over to me. When I got the thumb impressions of Juhi Begum on the receipts her husband Hashemali Khan and Taki Saheb used to live with her at premises No. 28, Circular Garden Reach Road. They were both literate. This document bears my signatures. I got this Kabuliat registered. It was not read over to me. The signatures are marked Exhibits F to F3. This Kabuliat relates to premises No. 120, Circular Garden Reach Road for which I had previously obtained a Patta from Amir Begum. Saiyad Kayem Hossain was Tasildar of Saiyadali and also of Saheba Khatun. I knew Jafar Khan. He is not in Calcutta. Next says, I have not seen him in Calcutta. He accompanied me to the Registry office I know Muhammad Habil. He is alive. Kaem Hosain is dead. I know Muhammad Ilias of Kaylasarak. I do not know any other person of that name. I paid rent to Saiyadali at Rs. 36 per year, *i. e.*, at the rate of Rs. 3 per cotta. I got receipts from his manager for 2 or 3 years. I remitted rents by M O. but it was refused. I cannot say if the receipts are at my house. I cannot say if Mahmuda Bibi is also at Rangoon for the last 5 years. I have not seen her. I cannot say if Hanifa Bibi is also in Calcutta. I have never seen her and Khatija Bibi also. I was not asked by Hashem Ibrahim Sailaji to give evidence on their behalf. Golam Hosain husband of Mahmuda Bibi served the summons upon me. I do not remember if I signed on the back of summons. The expenses of attending this Court in this suit are paid by me and not by anybody else. I bear the expenses of my refreshments in the Court compound. I cannot say my total expenses on such accounts. I have an income of Rs. 45 per month on rents from the sub-tenants of premises No. 120, Circular Garden Reach Road. I also get an income of Rs. 10 from the house in which I live. I have to pay rent at Rs. 3 for each of these two plots of land. I pay Rs. 8½ as Municipal tax for premises No. 120 per quarter. I have to pay taxes separately for the house I occupy. I do not want to realise the money spent by me in this suit from Mahmuda Bibi. I have seen premises No. 132, Lower Chitpur Road. I saw the number plate of premises No. 132, Lower Chitpur Road. It was near the site of its door. I saw it when Amjadali hired that house. I did not notice Hamidia hotel on the groundfloor of that house. I cannot

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say if the number of the house was 130. I cannot say how many rooms were in its upstairs. I saw only three rooms there. Amjadali hired those three rooms. I cannot say if Musafirs (travellers) stayed in the upstairs. I did not see any Musafirs or Shawlwalas there. I did not see premises No. 8/1, Amratola Lane at that time or at any other time. The number of the house of Hashem Shailaji is 8, Amratola Lane. I never went there on the date of execution of the deed of assignment I had been only to premises No. 132, Lower Chitpur Road and nowhere else. Mahmuda Bibi did not come there. Golam Hossain, a pleader brought by him, Ganesh Babu, Registrar, Amjadali and I were present there on that day. I do not notice if Golam Hosain did anything on that day. I do not know the name of that pleader. I went there alone. I had been to that house when Ganesh Babu accompanied me there at the time of execution of the deed of assignment. Execution of the deed took place 8 or 9 days before its registration. On that day Ganesh Babu, Golam Hossain, Amjadali, Golam's pleader and I were present. Hashem Shailaji was not seen by me on either of those days. Ganesh Babu and Golam Hossain and his pleader went away towards Amratola after execution of the deed by Juhi Begum. I did not accompany them then. I saw it when I was coming downstairs.

N. B. Banerji,
Offg. Subordinate Judge.
29-3-35.

Further cross-examined:—Juhi Begum had no personal expenses of her own. She used to pay her pension to her mother who maintained her. She had no children. I do not remember if I ever saw her incurring any debts. I do not remember if she had any necessity for any loan. She was never in a position to pay Rs, 4,000 or Rs. 5,000 any day to one person at one time. Why would she get so much money? I was acting as a Mukhtear for her from the year of Prince's death till her death. I never heard that she got a lakh of rupees on any day. I heard of a decree being passed against her for a lakh of rupees. The Am-Mukhtearnama executed by her in my favour was read over to me. It was registered at premises No 123, Circular Garden Reach Road. She was residing at that time at premises No. 28, Circular Garden Reach Road. She came to premises No. 123, Circular Garden Reach Road for the purpose of its registration. I do not remember the date of receipt of the plaint of this suit. I do not remember the year also. I got the plaint from Juhi Begum at premises No. 11, Rangolal Street. I do not remember how long she stayed at Sandila before she came to Calcutta 5 or 6 days before the execution of the deed of assignment. I cannot say if she stayed there for 2 or 4 or 6 months then. Amjadali was present when she handed over the plaint to me. None else was present then. I took it to Bhupen Babu her pleader. He read it over to me in Hindusthani in Court compound. I informed Juhi Begum that it was all right as said by her pleader when I took the draft of the plaint and made it over to her. She then handed it over to Amjadali and requested him to have it typed on differ-

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ent paper. On that very day I took that draft to her and she made it over to Amjadali to have it typed. Amjadali was then putting up at house No. 11, Rangolal Street. At that time the manager and Makram were also living at the house. Excepting myself and Amjadali none else was present there when Juhi Begum asked Amjadali to have the draft typed. I do not know where he got it typed. After it was typed Juhi Begum told me to take it to Bhupen Babu and show it to him. Accordingly I went to Bhupen Babu and handed over the draft and the fair copy to him. He compared them and told me that everything was all right and asked me to bring the fair copy of the plaint duly signed by Juhi Begum by having her thumb impression thereon, and some costs from her. Two or three days after that day Juhi Begum signed the plaint and made it over to me with Rs. 250 and asked me to hand them over to Bhupen Babu. She had put her thumb impressions on the plaint in my presence. On that very day I made over the plaint as well as Rs. 250 to Bhupen Babu. I did not take any receipt from him. On that day the plaint was filed. Amjadali did not accompany me to Court on that day. He stayed at house No. 11, Rangolal Street. I do not remember for how many days he stayed there then or if it was for 1 or 2 months. Juhi Begum remained in that house for about a month from that time. After executing the deed of assignment and getting the same registered she went away to Sandila with Amjadali. When the T. S. No. 89 of 1930 was going on Juhi Begum was staying at that house. I do not remember how long she remained there at that time or if she went away with Hamidali in 1929 or if she came back to that house for the first time in March, 1931. I do not remember if any deed was executed during the pendency of T. S. No. 89 of 1930. I saw Juhi Begum 3 or 4 days before her death but I did not see her again as doctors prohibited me from visiting her during her serious illness. I do not even remember if she went away from house No. 11, Rangolal Street after the T. S. No. 89 of 1930 was disposed of by 2nd Munsiff's Court at Alipur or whether the deed of assignment was executed before or after the disposal of that suit or if this suit was instituted before or after its disposal. I got the rubber-stamp mark of which is borne by the plaint prepared in Calcutta after receipt of order from Juhi Begum. I do not remember how long it was after I became her Attorney. I used to keep that rubber stamp. Juhi Begum had no seal with her as Amir Begum had. I do not remember on which day I was informed of Mahmuda Bibi's petition for substitution of her name as a plaintiff. I do not remember who informed me of it. I do not remember how many days before Juhi Begum's death I told her about it. I do not remember who were present then except her servants. Except her mail-servant named Tunni I cannot name her other servants. I was not present when sum of Rs. 100 was paid to Juhi Begum at Sandila. Another sum of Rs 100 was received by her in my presence from Golam Hosain at house No. 11 Rango Lal Street. That money was due to her then. It was handed over to me by Golam Hosain asking me to make it over to Juhi Begum. I made it over to her. It was about a week before her death. I received a receipt from her for the payment. Then witness says, I did not take the receipt but Golam Hosain who paid the money took the

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiff No. 2.

No. 41. Uzir Ali, witness No. 2.

receipt. I do not know who wrote the receipt. It bears my seal mark so far as I remember. Golam Hossain did not take the receipt on that day. He took the receipt on next day. Next says, I delivered the receipt to him. Juhi Begum did not appear before Golam Hossain. I do not recollect absolutely when I saw the latter last or if I saw him 5 or 6 years ago, or at which place. I did not demand the 2nd instalment of the allowance under the deed of assignment. Golam Hossain came and paid it of his own accord. I did nothing else excepting the fact of mentioning the matter of Mahmuda Bibi's petition for substitution to Juhi Begum. I paid rent for house No. 120 Circular Garden Reach Road to Begum Saheba and also to Sayedali but I cannot say if the latter was Mutwali. I do not remember if I said in my previous deposition that Sayedali might be a Mutwali but I do not know it. I cannot say if premises No. 120 is Wakf property or if Kamar Kader made a Wakf of his properties. Majlises are held at premises No. 123 Circular Garden Reach Road on the occasion of Mohurram from the time of Nawab Fakar Mahal when the Ex king of Oudh was alive. I also prepared sweets and other eatables during such occasions during Sayedali's time. Next says, I do not do it but they were brought from the market and I used to see their distribution. I used to get Rs. 10 per month and give a receipt for it since the time of Begum Saheba including the time of Sayedali. It is not false that Hamir Begum used to pay me Rs 20 per month. I do not remember if I said in my previous deposition that she used to pay me at the rate of Rs. 10 per month. There is no Masjid at house No. 123 Circular Garden Reach Road. The room which was used as Imambara from the time of Nawab Fakar Mahal still exists there. After Muhurram was over the room was cleared and Begum Saheb and others used to live there when the Muhurram requisites were kept in a smaller room. I do not remember if Nowchandi Majlises are held at that house. The rent receipts I got were not read over to me. They are not with me. Korbani is held at house No. 123 Circular Garden Reach Road during Baqrid ceremony as it is held everywhere. I never lived at house No. 11 Rangolal Street named Jamtala Kuti. I saw Kisorimohan Bose during Saheba Khatun's time. I do not know if he was Tasildar of the Prince. He useb to do works like Tasil during his time. I do not know if Mirza Mahammad Hosain *alias* Achha Saheb used to serve the prince. Gayadin was Durwan of Saheba Khatun. I never saw her pay any salary to him. I do not remember if Towhid was a servant of the Prince Kamar Kadir. I as also other servants used to look after preparation of Hisyas during Muhurrum festival. Such Hisyas are distributed on that occasion. I did not look after T. S. No. 120/30 of 4th Sub-Judge's Court on behalf of Khatijan Bibi Prince Babar was examined as a witness in that suit on commission. I do not remember if I remained present at that time. I do not remember if I said in my previous deposition that I was present with Babar's son in a room contiguous to the room in which Prince Babar was examined. I do not know Adul Kasem Commissioner. I do not remember if I took him in a taxi to the house of Prince Babar. I did not remember if I said in that suit that I did not accompany the commissioner to the house

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of Prince Babar in a taxi. I cannot say why the last page of the plaint contains a green thumb impression of Juhi Begum. I was never a partner of Sahilaji in a match factory. I do not remember the shop of Sriram Agarwala at Metiaburz. I do not know him. I never sell cocaine. No search was made in my house for cocaine. I do not remember if I said before that there was such a search. Prince Babar is dead.

N. B. Banerji,
Offg. Sub-Judge,
2-4-35.

Read over, explained and admitted to be correct.

(Illegible),
B. C,
2-4-35.

Uzir Ali.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiff No. 2.

No. 41.
Uzir Ali, witness No. 2.

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No. 42.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 50-71—Deposition of Mr. Ganesh Chandra De, witness No. 3 for plaintiff No. 2, dated the 25th and 26th March, 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Case No. 12(*sic*) of 1934.

Evidence for plaintiff No. 2.

No. 42. Mr. Ganesh Chandra De, witness No. 3.

Deposition of witness No. 3 for the plaintiff No. 2 taken on solemn affirmation on the 25th day of March, 1935, before Babu Nikunja Behary Banerji, 3rd Additional Subordinate Judge of Alipore.

Examination.

My name is Ganesh Chandra De, son of late Chandi Charan De, by caste———. My age is 61 years. I reside at 28 Cornwallis Street, District 24-Parganas where I am a Solicitor.

I am a solicitor of Calcutta High Court. I was an attesting witness to the conveyance. It was executed by Juhi Begum in my presence. It is a type-written deed. Identifies Juhi Begum's and witness's signatures. The conveyance is marked Exhibit 7. I acted for the vendor Juhi Begum as her solicitor in this transaction. I explained the whole of the document to her. She expressed her approval that she understood it. Mr. P. L. Mitter (torn) solicitor who was acting for Mahmuda Bibi. His signature also appears in the conveyance as such. He explained the conveyance also to her in my presence. Without seeing the conveyance I cannot say definitely what was the consideration money for it. Seeing the deed witness says that the consideration is that the vendee should pay the vendor during the term of her natural life sum of Rs. 100 monthly every month and that sum of Rs. 15,788 due and owing by the vendor to the vendee in respect of two promissory notes was to be retained by the vendee in full satisfaction of the amount due on the promissory notes. This conveyance is subject to the claim of Khatija Bibi in T. S. No. 8 of 1931 in respect of $\frac{1}{3}$ share of the vendor in the properties mentioned in the schedule in the conveyance and also to other conditions laid down in the conveyance. Mahmuda Bibi also executed this conveyance. I do not remember exactly what became of the aforesaid promissory notes. I think that those notes were produced and discharged and made over to the constituted Attorney of Juhi Begum named Ujir Ali I do not remember the actual fact of return of such notes. Seeing the promissory notes witness says that so far as he remembers, these were the identical promissory notes produced at the time of the conveyance. The notes are marked Y and Y1 for identification. I do not remember if Mahmuda Bibi made any application for substitution of her name for Juhi Begum on the basis of the conveyance. This is the affidavit I swore on 23rd November 1931 in connection with that application. The facts stated therein

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

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No. 42. Mr. Ganesh Chandra De, witness No. 3.

Cross-examination for plaintiffs Nos. 1 and 1(a).

were true to my knowledge then. So far as I think the affidavit was typed at my dictation. It is marked Exhibit 8. So far as I remember, the draft was prepared by Babu Pannalal Mitra Attorney for Mahmuda Bibi and was placed before me for approval. On my requisition he produced the promissory notes before me on reference to which I verified the recitals in the conveyance. It is the usual practice for the purchasers' solicitor to draft the conveyance and send the draft to the vendor's solicitor for approval.

Cross-examined by pleader for subsitituted plaintiffs Nos. 1 and 1a :— The approved draft may be with Panna Lal Mitra. I cannot say without seeing it whether it was sent to me for approval on the date of execution of the conveyance. It may be 1 or 2 days before that date. I keep a diary book. All the particulars regarding the execution of the conveyance were entered in it. I have brought it with me here to-day. Ujir Ali and Amjad Ali first came to me in connection with this conveyance. Seeing the diary book witness says that on 16th February 1931 he received instructions for the first time regarding this conveyance, and that on next date 17th February 1931 the deed was executed by Juhi Begum at premises No. 132 Lower Chitpur Road and by Mahmuda Bibi at premises No. 8/1 Amratola Lane in Calcutta. I do not remember if those premises are parts of the same house. I found the premises No. 132 Lower Chitpur Road a tenanted house and the premises No. 8/1 Amratola Road a well furnished house. They appeared to me to be two separate houses with two different entrances. I was taken to those houses at about 6 P. M. on 17th February 1931. I find this noted in my diary book. Witness says this on reference to his diary book. On that day the appointment of 6 P. M. as the time was made either in the morning or in the noon. I got the draft with a letter from Panna Lal Mitra on 16th February 1931 either at the same time or shortly after the matter was first mentioned to me on that day. Ujir Ali came to me on 17th Febuary 1931 before making the appointment of time. About 1 or 2 days before date of approval of draft I requested him to bring a letter from Juhi Begum as she was a Purdanashin lady. I saw him again when he came with the letter on 16th February 1931 and appointed the time of our attendance at the aforesaid houses at 6 P. M. on 17th February 1931. I again met him at those houses after 6 P. M. on that day. Witness produces the letter which is type-written. I received it from Ujir Ali on 16th February 1931. My diary book does not show anything about written instructions being received by me. On 16th February 1931. I approved and sent back the draft to Panna Lal Mitra. (The letter which is undated but was received by me on 16th February 1931 from Ujir Ali and which is produced by witness and which is type-written in English is seen and returned by the Counsel of substituted plaintiffs Nos 1 and 1a—(illegible). Ujir Ali was known to me from before as he gave me instructions on behalf of Juhi Begum in 1 or 2 cases before and I acted for her in those cases in 1929 or 1930, 1 or 2 years before the date of the conveyance. Those cases related to letters written by me to the person who had withdrawn her money from the Collector's office, for refund of that money to her. So far as I remember, that was the

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first occasion I had to work diary for Juhi Begum and I met Ujir Ali. I do not remember if it was the only occasion on which I had worked for Juhi Begum and met Ujir Ali before the matter of conveyance. I do not remember if I was successful in my attempt to recover Juhi Begum's money on that occasion. I have not brought the diary book of 1929 and 1930. I do not recollect without reference to my summons whether the diary book brought by me was called for by added plaintiff in this suit. Before I came to Court I looked to the entries therein to remind me of what took place before. I have brought the diary book and the letter to avoid coming back here again in this connection. I was told by Babu Satis Chandra Ghose in Court room on a previous date of hearing that I would not have to come to Court again as my affidavit filed in the suit would serve the purpose. I know Hashim Ibrahim Saleji husband of Khatija Bibi and father of Mahmuda Bibi for over 30 years. I did some of his works also before he became insolvent. I have seen him here in Court room. He is now standing in front of its door. I made no enquiry as to the value of the property involved in the conveyance. I did not and do not know what its value was or is now. I did not ascertain whether Juhi Begum had any property other than what is mentioned in the conveyance. I did not satisfy myself if the consideration for the conveyance was fair. I did not see any of the properties covered by it. I do not remember to have seen any other documents except the two promissory notes regarding the suits mentioned in the conveyance. I got an account of the amount due on the notes made by my clerk named Master Babu. I do not remember latter's name. He is in my service for more than 5 years. I did not verify his account as he reported to me that it was accurate. I did nothing to ascertain what would be the fair market-value of the subject matter of the conveyance or what the approximate income from the properties conveyed would be. In answer to the question— Will it surprise you to learn that having regard to the market value of the property conveyed when the amount of the consideration mentioned in the deed the transaction was an unconscionable bargain witness says that both parties agreed to it and he did not ascertain the value of the property and so he cannot say whether it was unconscionable bargain or not. I did not think it necessary to enquire into that matter because I thought that the parties had agreed to it. I was not asked to make any such enquiry and so I did not satisfy myself whether the transaction was fair. I did not give Juhi Begum any advice on the point. I do not remember if Hashem Ibrahim Salehji accompanied me to those houses on 17th February 1931. I am not prepared to deny that he came to fetch me to those houses. Ujir, Amjadali nephew of Juhi Begum and I think, Hashem Ibrahim Salehji were found by me present at those houses when I arrived there. No other male person was present there, so far as I remember. The males including ourselves were in one room. I understood that the lady Juhi Begum was in the next room. I think Pannalal Mitra also went there along with me. He had the deed of conveyance duly drawn up and engrossed or stamped. He and I were taken to an adjoining veranda where we took our seats in chairs. I was told that the lady Juhi Begum was behind the Purda in the next room. I think

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

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Amjadali told me this. I then asked him to look if she was behind the Purda in that room. He afterwards informed me that she was seated in that room behind the Purda. Then I asked the lady behind the Purda if she was Juhi Begum. She answered my question by saying that she was Juhi Begum. I was satisfied on her answer that she was Juhi Begum. I did nothing else for my satisfaction on that point. Then I explained the contents of the deed of conveyance to her. I do not know if there was any other lady in that room along with her or she was alone there. As she never spoke to me before I did not recognise her by her voice. I never in fact met her before. As I knew that she did not know English I explained the document to her in Hindusthani. I did not know if she was illiterate. It is my opinion that she was not a literate person as she put her mark on the deed. I did not ask her whether she was literate. I do not know Urdu but I know Bengali, English and Hindusthani. I do not know if Juhi Begum's mother-tongue was Urdu. I have studied Sanskrit. I never learnt Persian or Urdu. I cannot read Urdu letters. I read the deed of conveyance to Juhi Begum word by, word by translating it in Hindusthani. It took nearly an hour to explain the document to the lady. I returned home at about 7 P. M. on that day after completion of the execution of the document by both parties *i. e.* both by the vendor and the vendee. Babu Pannalal Mitra explained the document to the vendee in my presence. He took about the same time to do it as I took. The place of execution was at a distance of $\frac{1}{4}$ hour from my house. I belong to the firm of Manuel Agarwalla and Co. Mr. P. L. Mitra solicitor has his own business firm. His office and our office are held in different rooms in the same flat. He is my son-in-law. He is not charged any rent for the room used by him. Its rent is included in the rent payable by Manuel Agarwalla and Co. for the premises. I did not know where Juhi Begum lived. She came to premises No. 132 Lower Chitpur Road for the purpose of executing the deed of conveyance. I do not remember her(?) address from which she came there. I did not enquire about it. I cannot say who informed me that she lived elsewhere. Hashem Ibrahim Salehji might have informed me of it. I do not remember if I enquired why she did not execute the deed in her own house. It must be a matter of convenience to her to come and do it at house No. 132 Lower Chitpur Road. It was more convenient for us to have the deed executed by the ladies at the aforesaid premises. I did not consider their convenience as they agreed to the arrangement made. Registration of documents in Calcutta may be Rs. 20 more costly than if it is done in the place where the properties are situate. I did not enquire where the husband and other relations of Juhi Begum were then. It did not strike me as strange that a lady of Oudh family should come to Calcutta for execution of the deed of conveyance leaving her near relations elsewhere She was in Calcutta up to the date of its registration. I cannot say when she came to and then she left Calcutta. I cannot say where she put up in Calcutta on that occasion. The house No. 132 Lower Chitpur Road belonged to one Musa Shaleji nephew of Hashim Ibrahim Shaleji. Musa Shaleji separated long ago from the latter. To my knowledge Hasim Ibrahim Shaleji has no personal property. He is one of the beneficiaries in respect of the Wakf created by his father Ibrahim

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Soleman Shaleji. He lives in one of the Wakf properties which is in the hands of the Official Receiver. I know it as I acted for sometime as a solicitor for the family Wakf estate. (Witness declines to write down now what he explained in Hindusthani regarding the deed of conveyance to Juhi Begum. However, the witness takes about 20 minutes' time to write down the translation of the bottom half of page 2 of the deed of conveyance in Hindusthani as he did at the time of explaining the document to Juhi Begum, as wanted by the cross-examining counsel of substituted plaintiffs Nos. 1 and 1a—(illegible). It forms a part of his deposition. I think that it is a specimen of the explanation of the deed made by me to Juhi Begum before its execution. I translated the whole of the document from beginning to end thus in Hindusthani language. The whole of the schedule was not translated by me. Only the numbers of premises, the names of streets where they are situated and the locality were explained by her(*sic*) to her. After I explained the document I asked her whether she understood it. The lady inside the room answered my question by saying 'Yes'. This was enough to satisfy me that she understood it. After this she put out her hand and signed the deed by putting her thumb impressions as well as marks, so far as I remember. Her constituted Attorney and Amadali might have stated to her what was omitted by me at the time of explaining the document to the lady. I did nothing else to bring home the nature and effect of the document to her. Nothing else was asked her by me. I do not recollect that anybody asked her anything else as to whether she understood the document.

N. B Banerjee,
Offg. Sub-Judge,
25-3-35.

Further cross-examined:—I do not think that anybody else explained the document to the lady Juhi Begum within my hearing. The only explanation made by me to her was by translating the document clause by clause and stating their substance to her in Hindusthani. I do not remember if I omitted in my evidence given yesterday that I stated the substance of the document clause by clause when translating the same to the lady. I explained the deed clause by clause and stated the substance of it at the same time to the lady. The word 'explained' covers everything. I explained every recital in the deed and stated the substance of it to her while explaining the deed to her. I did not translate any clause of the deed word after word. If I said so yesterday I correct it to-day. I cannot give any further details about it. I explained the deed in the way shewn by the sample written by me yesterday. I did it in no other way. I do not recollect if Amjad Ali came to my office before the execution of the deed. In my office he might have come. I cannot give any definite idea on that point. I cannot describe the features of that man. I cannot say his approximate age as I made no note of it specially. I do not recollect if I saw him before the execution of the deed. Either Hashem Shaibji or Ujir Ali identified Amjad Ali before me. On my asking either of them about the person who would identify the lady either of them told me by

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1931.

Evidence for plaintiff No. 2.

No. 42. Mr. Ganesh Chandra De, witness No. 3.

introducing Amjad Ali as the nephew of the lady that he would identify her. I had no reason to disbelieve the statement of those persons. I might have met Amjad Ali also on the date of registration of the deed. I do not remember if I met him except on these two occasions. I do not remember who actually called at my office to fetch me to the registration office. Attorneys usually attend the registry office at the time of registration of deeds. It is not absolutely necessary for them to do so. Without reference to my day book I cannot say what part was taken by me at the time of registration of the deed. I do not recollect who were the persons who were actually present at the time of registration of the deed. I cannot give the exact translation of the words 'further consideration' in Hindusthani. I can give their explanation in Hindusthani. 'Further' means 'Aur'. I cannot translate the word 'consideration' into Hindusthani word even now. 'In full satisfaction' means পুরা রুপেয়া মিল গিয়া or *pura rupeya mil giya* 'as beneficial owner' means 'পুরা মালিক্কা তৌরসে' or *pura malikka toursey* 'convey' and 'sell' mean বেচিকিয়া *becha kiya*. 'Release' means 'হক ছোড় দিয়া' *hak chhor diya* and 'confirm' means মঞ্জুর কিয়া *manjur kiya*. *Beyond* what is stated in the deed and beyond the fact that payment of Rs. 100 monthly by vendee to the vendor is one of the considerations for the deed I did not think it necessary to secure it by any other means nor was it mentioned to me by the client's agent. I consider the covenant in the deed as sufficient. I did not look into the manner in which the promissory notes were discharged. I did not look at the back of such notes to see if they were really discharged.

Cross-examination for defendant No. 2.

Cross-examined by pleader for defendant No. 2:—I know that Juhi Begum was a married lady at the time of execution of the deed. I do not remember if her husband was alive then. Seeing the deed witness says that her husband Nawab Saiyed Muhammad Hashem Ali Khan was then alive. I did not enquire if he was present in Calcutta then. It was not necessary as the lady had a constituted attorney. I consulted the power of attorney when Ujir Ali came to me to give me instructions. I have seen that power. I do not remember if it contained authority to negotiate for the sale. I did not enquire where the husband of the lady was at that time. I did not see him either on the date of execution of the deed or at the time of its registration. This is the power Exhibit 6 I saw. It is meant to authorise the person to draw pension. It is not necessary for any person to have a power or authority to negotiate for sale. Reading Exhibit 6 witness says that it contains no such power. It does not empower the attorney to get the deed registered in the registry office. Mahmuda Bibi is a married lady. I have seen her husband. I do not remember his name exactly. I think that he was present at the registry office at the time of registration of the deed and also at time of it execution by Mahmuda Bibi. Seeing diary book witness says that it does not show his name. Seeing the conveyance Exhibit 7 witness says that his name does not appear in it either as an attesting witness or as an identifier. I do not know how he is placed in society. I also do not know whether Mahmuda Bibi had any property in Calcutta or anywhere else or not. No charge was created upon her property for the monthly allowance to (be) given by her to the vendor as

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provided in the conveyance. I did not think over it. The consitituted attorney of Juhi Begum must have given me her address as 132 Lower Chitpur Road in Calcutta. It might have been given by Hashem Ibrahim Shaibji. It is a two-storied house. I went through the staircase to the upper story of the house. I had no occasion to examine its number plate. I did not see if there was a hotel on the ground floor of that house. Burrabazar registration office was I think located in that house before. I had been to that house on many occasions in that connection If Burrobazar registration office was not located there I did not go there before. I went to the office of Hashem Shailaji as Amratala Lane or Street before. I do not remember its number. I worked for 30 years for Ibrahim Soloman Shaleji for 30 years who was father of Hashem Shaileji. Hashem is a member of that firm. I have been practising as a solicitor from 1899. I cannot say in which year Ibrahim Soloman Shailaji died. I may be 30 years ago. This firm was carried by Hashem and his brothers till their insolvency. Hashem used to be in charge of all suits of that firm. On entering the Amratola Lane the first house where I had been was the office of the firm of Ibrahim Shaileji. House No. 132 Lower Chitpur Road stands on that road; its entrance is also through that road. I do not remember it exactly. I do not examine that house whether it was complete by itself. I was told that Juhi Begum was taken there from elsewhere for the purpose of execution and registration of the deed of conveyance. I cannot say if she resided there from the date of execution to the date of registration of the deed. On the date of registration I did not see the lady beyond her hand extended for putting her mark and thumb impressions on the back of the deed. I was told by Ujir Ali or Amjad Ali or Hashem Shaileji on the date of execution of the deed that the lady Juhi Begum was in the next room behind the purdah. I made no further enquiry about it. I do not know if the lady came to Calcutta in March 1931 or if she wrote a letter to the Collector or if there was an enquiry about the incident. When the attorney Ujir Ali came to me to give me instructions I did not note it in my diary book save and except that he made over a list of properties to be conveyed and a letter signed by the vendor with instructions to approve the draft of the conveyance. That letter bore the mark and seal mark of the lady. I did not see that seal. That seal mark was not put on the letter in my presence. As regards the mark it was already on the letter when it was brought to me. That letter might have been typed in my office. Two days before 16th February 1931 I instructed Ujir Ali to produce a letter from the lady. It was drafted either by me or somebody else in my office. It was typed and handed over to him before 16th February 1931 to get the signature of the lady. It was made over to me by him on the 16th February 1931 duly signed and sealed. There is no reference in my day book to Ujir Ali's coming to my office earlier than 16th February 1931. Before receipt of letter of authority from my client matters that occur from that date are not entered in my day book. In such cases the drafting and typing of the letter are not charged by me. It was not possible that Ujir Ali got the typed letter on the 16th February 1931 and handed it over to me also on that day duly signed and sealed by the lady. It is my impression that Ujir Ali must have

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiff No. 2.

No. 42. Mr. Ganesh Chandra De, witness No. 3.

called at my office earlier than 16th February 1931 and got the typed letter from my office earlier than 16th February 1931 with reference to the draft of that letter prepared by me. I read that letter brought by Ujir Ali and found it undated. I myself dated the letter. I did not enquire of him about it. I approved the draft of the coveyance and made some corrections in it which I do not remember. I think that the draft was sent by Ujir to the lady after my approval before sending it back to the solicitor of the vendee. There is no reference in my day book to it. I do not remember when I received the draft from Mr. Mitter or when it was made over to Ujir for sending it to the lady. It came back to me on the 16th February 1931 but at what hour I do not remember. I cannot give you any idea of the complexion of the hand extended by the lady in the registry office to put her thumb impressions on the back of the deed of conveyance. I do not remember if any thumb impressions of the lady were taken on the deed on the date of its execution by her I wrote her name on it. I do not remember if the mark and the name were written with same ink. I cannot say on reference to the deed also if it is so. The name appears in a deeper shade than the mark. The words 'Juhi Begum and her mark' are in my handwriting. The words 'Zinat Ara Zainub Begum *alias*' are in another person's handwriting. I do not know remember who wrote them. I think that Ujir Ali does not know English. I will not be surprised to hear that Juhi Begum was of dark complexion. I do not know if Ujir Ali was a witness for Khatija Bibi in her suit. I do not know Hanifa Bibi. I do not know if Ujir Ali is a witness in her suit in 2nd Munsif's Court at Alipur. Harimohan Mazumdar is the name of my clerk in my office who is known as Master Babu. He does not know Urdu. The amounts stated in the endorsements written in Urdu on the back of the promissory notes were supplied by Ujir Ali to me or to somebody else in my office either in writing or verbally. I cannot say where the written note about it is. I do not remember to have checked the calculations made by Master Babu. I have got assistants in my office. Mr. Mitter is not my assistant. He is in Calcutta to-day. I do not remember who paid my fees in connection with the conveyance in question. I think that the handnotes stood in the name of Hashem Shaileji. They were endorsed by him in the name of his daughter but not in my presence I did not enquire about it, so far as I remember. I did not act for Hashem Shailaji in the insolvency matter. I do not know the residence of Amjad Ali or Ujir Ali.

Examination.

Re-examined:—This is the letter I received from Ujir Ali on 16th February 1931 authorising me to approve the draft of the conveyance on behalf of the lady Juhi Begum. It is marked 'Z' for identification subject to objection of plaintiffs 1 and 1a and defendant No. 2. I got it in the same state as I find it now with the same mark and seal mark. My attention is drawn to the date put by me on the letter. I was cross-examined with reference to the endorsements made by me. I am now the sole proprietor of the firm of Messrs. Manuel Agarwalla and Co. The word 'received' and the

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date are in my handwriting. They were written by me on the date I received the letter. They are marked Exhibit 9.

N. B. Banerjee,
Offg. Subordinate Judge,
26-3-35.

G. C. De,
26-3-35.

After perusal of the deposition witness states that the deed of conveyance was registered at the residence of the vendor and the vendee *viz.* at 132 Lower Chitpur Road and 8/1 Amratola Lane in Calcutta on commission and so he was present there at the time of registration of the deed and not at the registry office as stated above by mistake. As a matter of fact the witness says after perusal of his evidence that the deed was engrossed and signed on 17th February 1931 but was stamped later on on 25th February 1931 when it was received back from the Collector's office and registered. Witness also referred to the conveyance in stating it.

N. B. Banerji,
Offg. Subordinate Judge,
26-3-35.

G. C. De,
26-3-35.

(On a separate sheet attched to this deposition).

Agey Likha Bandobust matibik jisme apko mahina mahina ekso rupeya milega ayur panera hazar satso athasi jo rupaya ap Kharedar ko whatche ahi rupeya and(*sic*) *jo rupeya mahina mahina jo apko Kharidhar denga ap jo sabjaijat jo ehi dalilmae lekha hai yusika malik tayur ap Kharidar ko bechtahe. Apna kahi hu hakosh iske sahi bad kuch nehi raheya ayur jetna dalil dastaby hai ayur kohi baka apta dakhatme ayoga ohi sab dalil deteho ayur denga ayur ehi sab Mokamat.* and *Jaminka Kharidar pura malik hotahai. Ayur Khatija Bibi ka dada choreke yuer kisooka ehisab Makamat jaminpar kasoorka ka kahi huq mehi huf nehi hai.* (According to the Bandobast previously made you will get Rs. 100 every month; and you as a malik are selling all the properties covered by this deed to the purchaser whom you owe Rs. 15,788 and who will pay you the aforesaid amount every month. You will cease to have any rights and interests after your signing the same. You are making over and will make over all the documents that you have or may have hereafter. And the purchaser becomes absolute owner of all these houses and lands. Save and except the claim of Khatija Bibi no one else has any right to the houses and lands).

S. K. De,
25-3-35.

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No. 43.

No. 206—Petition on behalf of the plaintiff Mahmuda Bibi for leave to examine Sheikh Wajir Ali again for adducing rebutting evidence re: *the Wakf.*

In the 3rd Additional Subordinate Judge's Court, 24-Parganas.

T. S. Nos. 1 and 2 of 1934.

Mahmuda Bibi and another,

versus -

Hamida Begum and others.

The humble petition of the added plaintiff Mahmuda Bibi in the above case

Most respectfully sheweth :—

1. That the witness Sk. Uzir Ali is to be examined with a view to adduce rebutting evidence regarding the alleged Wakf.

2. That your Honour's petitioner has already obtained leave from your Honour to adduce rebutting evidence against the alleged Wakfnama after the defendant's evidence with regard to the issues relating to Wakf.

3. That the said witness Sk. Uzir Ali is to be examined to prove some issues the onus of which lie upon the plaintiff Mahmuda Bibi and as such he is going to be examined at present on those issues the onus of which lie upon the petitioner.

In the circumstances your Honour's petitioner prays that your Honour will be graciously pleased to grant leave to your Honour's petitioner to examine the said witness Sk. Uzir Ali again when she would adduce rebutting evidence as spoken of above.

And for which act your Honour's petitioner as in duty bound shall ever pray.

Dated 26-3-35.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

No. 43. Petition on behalf of the plaintiff Mahmuda Bibi for leave to examine Sheikh Wazir Ali again for adducing rebutting evidence *re:* the Wakf, filed on the 26th March, 1935.

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No. 44.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiff No. 2.

No. 44. Mr. Satis Chandra Ghosh, witness No. 4.

Nos. 72-78—Deposition of Mr. Satis Chandra Ghosh, witness No. 4 for plaintiff No. 2, dated the 2nd April, 1935.

T. Case Nos. 1 and 2 of 1934.

Deposition of witness No 4 for the plaintiff No. 2 taken on solemn affirmation on the 2nd day of April, 1935, before Babu Nikunja Behary Banerjee, 3rd Additional Subordinate Judge of Alipore.

Examination.

My name is Satis Chandra Ghosh, son of late Hiralal Ghosh, by caste ——. My age is 59 years. I reside at present at 19 Shasthitala Road, Khiderpur, District 24-Parganas where I am an Advocate.

I am an advocate. I have been practising in the District Judge's Court at Alipur from May 1899. I never saw Juhi Begum. I do not remember if I acted for her in my professional capacity. I faintly remember to have gone to a house in European Asylum Lane, Hosain Ibrahim Sailaji probably took me there. I was told by him that Juhi Begum was inside a room. I was present outside that room. I think that a document was executed by the lady in that room. Seeing the deed of assignment witness says that he is an attesting witness to it and that it bears his signature as such. I have no recollection if I signed the deed before or after its execution. It must have been after its execution. My signature also appears at the bottom of its 4th page as an attesting witness. Even looking at the deed witness says that he does not remember whether the deed was executed in his presence. The name of Juhi Begum on the back of the deed was written by me before the registrar. The entry is marked Exhibit 12. Most probably the thumb impression on the back of the deed was taken in my presence. I do not recollect it now even seeing it. I cannot say on reference to the deed whether I acted for Juhi Begum in regard to the transaction. I do not remember it. I never applied my mind over the matter whether it was a false or genuine transaction. If I know any transaction to be bogus I do not take part in it. I did not ascertain whether the deed of assignment was a bogus transaction. Before I act for any party to a transaction I do not ascertain if it was a bogus or genuine transaction. As I was asked to write the name of Juhi Begum and to attest the execution of the deed of assignment as a witness I did so. I seldom become an attesting witness to a deed. The deed of assignment must have been executed by the lady and I attested it as a witness. But I never enquired whether the document was true or false. The deed of assignment is marked Exhibit 12A. The witness admits the endorsement on a letter

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiff No. 2.

No. 44. Mr. Satis Chandra Ghosh, witness No. 4.

dated 19th June, 1919 as written by him and as true It is marked Exhibit 10A, I know Nawab Hashem Khan. He is present in Court room now. Witness identifies him. The letter bears his signature. I do not remember if the thumb impression of Juhi Begum was put on the letter in my presence. Her husband Nawab Hashem Ali Khan signed the letter in my presence. I explained the contents of the letter marked Z1 to the lady who was inside the room behind the Purdah. The letter was not typed in my presence. Seeing the endorsements at the bottom of handnote dated 19th June 1919 on left hand side witness says that it is in his handwriting and that endorsement on the right hand side is in the handwriting of Nawab Hashem Ali Khan. They are marked Exhibits 13 and 13A. Seeing the handnote dated 3rd March 1919 witness says that it bears the signature of Nawab Hashem Ali Khan. I know his handwriting and signature. The signature is marked Exhibit 13B. I appeared for Mirza M. Sayedali in these two suits. After his death I appear for his daughters. I probably did not see Sayedali sign. Seeing the power of attorney Exhibit 6 witness says that it seems to bear the signature of Sayedali. I never saw Mirza Jafar Shiraji manager of Sayedali's estate write or sign. I know Hamidali *alias* Loudan(*sic*) Aga. I do not remember if I saw him sign. Seeing the back of the deed of assignment witness says that it bears Loudon Aga's signature. I have some recollection of his signature. The signature is marked Exhibit 12B. Seeing the Patta Exhibit 11 witness admits that it bears Hamid Ali's signature. I acted as pleader for Nawab Shahabahu(?) Amir Begum Saheba. I never saw her. I acted for her in the suit No. 158 of 1920 of 3rd Sub-Judge's Court for some time. She withdrew from the suit. The suit was compromised by Haji Alabux and Sayedali. It is a suit for dower, administration of the estate of Kamar Kader and for other reliefs. From the certified copy of the plaint of that suit I say that I filed the plaint on her behalf. There was an order of adjudication in an Insolvency Case No. 10 of 1918 instituted by Mr. Refry(*sic*) a creditor of Kamar Kader. It was afterwards annulled. If I had known that Juhi Begum was not in the room and somebody else was personating her I would not have taken any part regarding the deed of assignment.

Cross-examination for plaintiffs Nos. 1 and 1(a).

Cross-examined by Counsel for plaintiffs Nos. 1 and 1a:—I cannot say if Juhi Begum was in need of any cash money in 1918 or 1919. I never knew whether she wanted any money at any time either before or after her father's death. I do not remember the passing of consideration under the deed of of assignment. I never enquired of Juhi Begum if she got the consideration money. With regard to the two handnotes I also do not remember to have seen the passing of consideration for them I do not remember to have been present on the occasion of the handnote for Rs. 12000. Loudon Aga writes his signature not as a good writer He writes like the student of a 2nd or 3rd class. He does not write in fluent style as we generally do. He writes the letter 'h' in a particular way which is distinguishable. If anybody imitates his signature I cannot distinguish it. I cannot describe in words any peculi-

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arity in the signature of Hashemali Khan. If anybody imitates his signature I cannot distinguish it. As a speaker of Urdu I can make me(*sic*) intelligent. I cannot speak Urdu well. I do not remember if I explained any other deed to any other lady of Oudh family. I do not remember to have talked with Juhi Begum on any other occasion. I might have talked with Amir Begum Juhi Begum did not complain to me that my explanation of the contents of the deed of assignment in Urdu was not intelligible to her. Her husband was present there. He also did not find fault with the manner of my explanation. I do not remember if the lady put any question to me. As there was no complaint on her part I think that my explanation was quite intelligible to her and that she understood the contents of the deed explained by me. I never enquired from the lady if she was told by anybody to remain silent all along. Want of her complaint might have been due to it but I cannot say if she was instructed by anybody to remain silent when I explained the deed to her even if my explanation was not intelligible to her. After seeing the letter dated 19th June 1919 to-day I recolleet that it speaks of an intended mortgage in lieu of two handnotes. Juhi Begum never sought any advice from me with regard to it. So I did not give her any advice in that regard. I had no occasion to apply my mind to the consideration of the question whether the intended mortgage would be a fair bargain for the lady as the mortgage was not executed and as her husband was present there. If the bargain was considered unfair her husband who was present there would have been the first person to object on that ground. It was no business of mine to enquire if the lady got the consideration money for the deed as her husband who was intelligent and knew Urdu well was present there but did not complain to me about that matter.

Cross-examination for defendants 1(b) & 1(c).

Cross-examined by pleader for daughters of Sayedali :—Shortly before the death of Kamar Kader I came to know of his family. Juhi Begum and her mother were residing at house No. 28 C. G. R. Road on 28th September, 1918. The house No. 13 European(*sic*) Lane was not her residence at that time. I was told that she was taken there either on that day or on the previous day. Prince Kamar Kader was alive on that day. Seeing the deed of assignment Exhibit 12 witness says that to his knowledge there is no attesting witness to the deed either known to or related to the lady except Loudon Aga. I cannot say whether the lady received any independent advice at that time. I knew Hashem Ibrahim Shailaji and Loudon Aga before the execution of the deed Exhibit 12. I do not know if the lady had any constituted attorney at that time. I knew M. Toki. I do not remember if he was constituted attorney of Juhi Begum. He was the manager of Amir Begum's estate. I do not know whether Juhi Begum inherited any property from Prince Kamar Kadir Nawab Hashedali Khan, Toki Saheb and Loudon Aga used to instruct me about T. S. No. 158 on behalf of Amir Begum. The latter never gave me any instructions, so far as I remember Juhi Begum was also a party to that suit. I did not appear for her in that estate I acted for Sayed Ali as Mutwali of the Wakf estate in some cases. In one case I found that

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiff No. 2.

No. 44. Mr. Satis Chandra Ghosh, witness No. 4.

I was superseded by another pleader engaged by him. So I retired from his case and appeared in some cases against him. Then he, when he lost those cases again engaged me as his pleader. Mirza Jafar Sheraji is the manager of the Wakf estate of late Mr. Kamar Kader.

N. B. Banerji,
Offg. Subordlnate Judge,
2-4-35.

Satis Chandra Ghose.

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No. 45.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 79-94—Deposition of Kiran Chandra Neogi, witness No. 5 for plaintiff No. 2, dated the 3rd April, 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Case Nos. 1 and 2 of 1934.

Evidence for plaintiff No. 2.

No. 45. Kiran Chandra Neogi, witness No. 5.

Deposition of witness No. 5 for the plaintiff No. 2 taken on solemn affirmation on the 3rd day of April, 1935, before Babu Nikunja Behary Banerji, 3rd Additional Sub-Judge of Alipore.

Examination.

My name is Kiran Chandra Neogi, son of late Ram Chandra Neogi, by caste———. My age is 43 years. I reside at 1/1 Prannath Pandit Street, District 24-Parganas. My occupation service.

I come from the office of the Official Assignee, Calcutta. I am in charge of the law and collection departments. I know of the insolvency case of Ibrahim Soloman Shailaji and Co. Hashem Ibrahim Shailaji was one of the partners of that firm. There were three other partners *viz.* Ismile Ibrahim Sahileji, Ahmed Ibrahim Shailaji and Kasem Ibrahim Shailaji, The assets of all these partners came into the hands of the Official Assignee. On the date of adjudication a list of creditors was filed by the insolvents in Court. A copy of that list was received by the Official Assignee from the Court. The insolvents prepared a schedule containing the list of creditors and debtors as well as properties. A copy of that schedule was also received by the Official Assignee from the Court. I have brought the copy of the schedule of Hashem Ibrahim Shaileji. Seeing that copy witness says that Khatija Bibi is one of the creditors in the personal schedule of the latter and that sums of Rs. 166420-2 annas and Rs. 41000 were stated to be due to her. I do not think that she preferred any claim. I do not remember if she filed an affidavit to prove her claim. I cannot say without reference to the file which I have not brought if other creditors of Hashem Ibrahim Shaileji including Khatija Bibi preferred claims in the insolvency case. This affidavit was made by Yusuf Muhammad Kharawa agent of Musafat Khatija Bibi of No. 8 Amratola Lane. It was not made in my presence. Latter's claim was received by the Official Assignee. It was proved by that affidavit. Her name was already in the list of creditors. She was admitted as a creditor in the insolvents' schedule. I have brought the register kept under the Insolvency Act. The affidavit and schedule and other papers are records of that register. The entries are marked Exhibit 15. Seeing the register witness says that Mahmuda Bibi is also one of the creditors of Hashem Ibrahim Shailaji to the extent of Rs. 8180-2-3p and that she proved her creditor(?) by an affidavit and that she was admitted as a creditor. The entry

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiff No. 2.

No. 45. Kiran Chandra Neogi, witness No. 5.

is marked Exhibit 15A. I remember that Mahmuda Bibi purchased the dues of Mackinon Mackenzie and Co. from the estate of Ahmed Ibrahim Shaileji and was paid the dividend due to her. Admits the certificate signed by Official Assignee. It is marked Exhibit 16. Official Assignee substituted as plaintiff in S. No. 1515 of 1918 brought by Hashem Ibrahim Shailaji against Juhi Begum and obtained a decree against her, realised a portion of the decretal amount and afterwards sold the decree to Khatija Bibi on 21st May 1929 for Rs. 3000. Witness says this on reference to the registers brought by him. Seeing the sale book witness says that the decree was sold by public auction to Khatija Bibi as the highest bidder, one Muhammad Sayed being the other bidder. I was present at the time of that auction-sale which was conducted by the Official Assignee. Muhammad Sayed himself bid at the sale. These entries are made by me. They are in my handwriting. They are marked Exhibit 17. The signature in the bid sheet is that of the Official Assignee. The endorsement in blue pencil in the bid sheet shows the date when the deed of assignment was executed. The decree was sent to Barabanki for execution and certain properties were sold there. I have to attend the High Court sometimes in connection with my duty. I do not know Muhammad Tahud (Hashem Ibrahim Shaileji is seen instructing the pleader for the plaintiff No. 2). I have brought the schedule of the firm. It contains the personal as well as the business schedule of the firm. Moran and Co. are the creditors of the firm to the extent of Rs. 30,000. The insolvent Hashem Ibrahim Shaileji furnished security of 90 shares in Asiatic Steam Navigation Company, 1000 shares of Peninaula Steam Navigation Company and jewellery of his wives Khatija and Jainat Bibi and his mother Momin to the approximate value of Rs. 3500. Witness says this on reference to the schedule. Moran and Co. sold the jewellery but I cannot say without referring to the book how much they got by its sale. That book is not brought by me. Seeing the schedule book witness says that Sahera Khatun preferred a claim for Rs. 180030 on account of her dower of 6001 Asrafi each being worth Rs. 30 against the estate of her husband Ismile Shaileji. Seeing the schedule of Hashed Ibrahim Shaileji witness says that no claim was preferred by his wife on account of her dower against his estate. Seeing the schedule book witness says that the values of the assets and liabilities of the firm as given by Hashem Shaileji are Rs. 9,80,978-11-11p. and Rs. 32,33,189-3as. respectively regarding business schedule of the firm as filed by him. The values of the assets and liabilities of the firm as given by Ismile are Rs. 403763-15-9p and Rs. 27,56,794-1-9p. respectively regarding business schedule of the firm. The values of the personal assets and liabilities of Hashem Shaileji as stated by him are Rs. 2,38,642-13-9p. and Rs. 7,47,294-13-9p. respectively. Those of Ismile are respectively Rs. 2,94,910-14-6p. and Rs. 5,86,203-0-3p. The firm creditors as well as the personal creditors of Ahmed Ibrahim Shaileji were paid dividends but I cannot say in what proportion. I know Muhammad Elias who is sitting now in Court room. I saw him yesterday in my office. I saw him also in connection with the affairs of Ibrahim Soleman Shaileji. By an arrangement between the substituted plaintiffs and Sayedali's daughter, defendants, the witness is cross-examined first by the latter as follows :—

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I know Hashem Ibrahim Shaileji. He is now present in Court room sitting behind added plaintiffs' pleader. He accompaied me to Court in a taxi from my office to-day. I have got my summons with me. I have brought all the documents called for. Hashem Ibrahim Shaileji went to my office of his own accord. I did not ask him the reason of his coming to my office. He himself did not tell me anything about it. Without looking to the summons I cannot say when I received it. Seeing the summons witness says that he received it on 26th March 1935 and that he was asked to attend Court on 27th March 1935. Mr. Hashem Shaileji told me on 26th March 1935 at the time of service that he would phone me up when my evidence would be necessary. During the interval he went to my office several times. He phoned me yesterday. The summons was addressed to the Official Assignee. Hashem Shaileji had talks with me as well as the Official Assignee. I received no summons from defendant's side. I received no letter from the Court. I have not brought the papers called for from defendant's side. I read the summons. It is in the usual form issued to the Official Assignee personally. Reading the copy of the letter kept in the suit record witness says that he did not receive that letter No. 14 dated 22nd March 1935. I do not know if any letter was sent from my office from this Court as referred to in that letter. The letters addressed to the Official Assignee go to him directly without passing through my hand. When he is asked to attend Court or to produce any paper I am not generally requested to do it. Some other officer may do it as directed by him. There is no order upon the summons directing me to attend Court with the records called for. But I enquired from him if I were required to attend Court and he said yes. I had no anxiety to attend this Court. The summons was issued to the Official Assignee to produce the documents through me. I cannot say why my name was selected in the summons by Hashem Ibrahim Shaileji. Nobody else other than the latter saw me in my office in connection with this case. I know the person (called Makramali) seated in the Court-room when pointed out by the cross-examining pleader. He saw me in my office with letter No. 14 in connection with this case, sometime in last month. I did not send him to the Official Assignee. He enquired of me about the letter but was told by me that I had not got that letter. I made no enquiry about the letter in out office. I cannot say whose duty it is to enquire about letters mislaid. Seeing the letter No. 14 witness says that he has brought the papers called for by it. I have known Hashem Ibrahim Shaileji since 8th December 1921 when he was adjudicated insolvent at the instance of creditor E. B. Sasoon and Co. He has not been finally discharged as an insolvent as yet. I have every knowledge of his affairs after his insolvency but no knowledge prior to it. My knowledge is derived from the papers in my office. As he was an insolvent in 1932 he had no assets. I do not know Khatija Bibi or Mahmuda Bibi. After an order of adjudication is passed the insolvent is required to file a schedule of creditors. Accordingly Hashem Ibrahim Shaileji put in the schedule prepared in his attorney's office J. C. Dutt and Company is his attorney. I was not present at the time of preparation of the schedule, as it was not necessary. It was put in in Court. From the Court it came

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to the office of the Official Assignee. I have nothing to(*sic*) do to verify the schedule. I did not verify the schedule The insolvents are to verify it. I am not to verify it to see if the names of persons mentioned in it are real or bogus creditors. I cannot say if Khatija Bibi was a real creditor to whom the amount stated was due or if Mahmuda Bibi was a real creditor. I know Khatija Bibi as wife of Hashem Ibrahim Shaileji. Morium Bibi is 2nd wife of the latter or not I do not know. Mahmuda Bibi is his daughter. Khatija, Moriman Bibi, Momin and Mahmuda Bibi did not produce any documents to prove their respective claims as they were not asked to do so. That question will crop(*sic*) at the time of declaration of dividend. So their claims have not yet been investigated as yet. Against them no documents are mentioned in the schedule. I cannot say if they are the creditors of Hashem Ibrahim Shaileji. Either they or the latter or his other creditors can say it. I do not know if Mahmuda Bibi is in Calcutta. The creditors named in the schedule are admitted by the insolvents as such. It will appear from the schedule whether the insolvent admits the creditors named or disputes their claims. Seeing the schedule witness says that there are lots of creditors named (*sic*) it whose claims are disputed. So far as the creditors mentioned in the firm schedule are concerned there are some whose claims are disputed and the Official Assignee investigated their claim before payment of dividends to them. But so far as the private schedule of Hashem Ibrahim Shaileji there has been no investigation of the claims of creditors, which are disputed and no dividend has been paid to them. Khatija and Mahmuda Bibi were not mentioned as creditors of the firm in its schedule. Mahmuda Bibi did not come to the office of Official Assignee for payment of the purchase money in respect of dues of Messrs Mackinon Mackenzie and Co. Only the deed of assignment was sent to our office for registration. I was not present when the deed was written or executed. I do not know who paid the consideration money. I cannot say if Mahmuda Bibi was a Benamdar. I cannot say who came to our office with the deed for registration. It must have come with a covering letter from an attorney. I have no knowledge of the assets of Mahmuda Bibi. I cannot say who received dividends on her behalf. Such payment were made by cheques drawn by Official Assignee. I cannot say who received such cheques from our office. I have not brought the records to show it. It is not possible for me to know what was the age of Mahmuda Bihi in 1921. I do not know Yusuf Mauhammad Kharowa. I do not remember how much dividend was paid. I had never been to the house of Hashem Ibrahim Shaleji at Amratola Lane. I do not know its number. He produced certain account books in our office but I cannot say if they relate to the firm or to his personal affairs. He was adjudged an insolvent not only as a member of the firm but also personally. For his personal affairs he had to produce books of accounts if he had any. I do not remember if he filed any such books personally. He had to put in his dues from his debtors in his personal schedule. That personal schedule is brought by me. It is one of the two original schedules put in by him. The signatures at the top of the schedules are not the original signatures of the Comissioner of Oath. This copy before me was not affirmed before the Commissioner.

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The one that was affirmed before him is in Court. The entries to which I have referred are in this book. In the personal schedule of Hashem Ibrahim Shaileji the sums of Rs. 3000 and Rs. 12000 are not shewn as his assets due from Juhi Begum. A sum of Rs. 12 lakhs have been shewn are due from the latter alone in that schedule. This amount must have been included in the personal assets of Hashem Ibrahim Shaileji which are given in the said schedule as Rs. 238642. I was not in charge of S. No 1515/1918 in the Original Side of High Court brought by him against Juhi Begum and others Messrs. Das and Basu of Messrs. J. C. Das and Co. were the attorneys of the Official Assignee in charge of that suit. Messrs. J. C. Das and Co. were the attorneys for Hashem Ibrahim Shaileji in his insolvency proceedings from before the taking charge of the case by the Official Assignee. I remember that the original claim of Hashem Ibrahim Shaileji was about 12 lakhs against Juhi Begum alone and against no other person. I do not recollect that the plaint was amended or whether it was an *exparte* decree or not. I remember that it was a decree for a lakh of rupees. I don't remember if the amended plaint was served on Juhi Begum or not. That is the duty of the attorney. I do not remember when the Official Assignee was substituted for the plaintiff. I went to Bara Banki several times in connection with the execution case about 6 or 7 times to ascertain what was going on there. I was not present when money was realised by sale of properties in the Ex. case. I forget the name of the pleader who was acting for the Official Assignee in the Ex. case at Barabanki. I do not know if any notice of the Ext. case was served on Juhi Begum. I cannot say the year when I went to Barabanki. I do not know where Juhi Begum was then living. As the Official Assignee could not execute the decree for the balance of money due he sold it. As he could not find any property of Juhi Begum he thought it proper to sell the decree by auction. As he could not find any property of Juhi Begum in Calcutta he sent the decree for execution to Barabanki. The information that she had property at Barabanki and not in Calcutta was given to him by Hashem Ibrahim Shaileji. I do not know if Juhi Begum was the daughter of Prince Kamar Kadem Mirza. I went alone to Barabanki in connection with the Ex. case. Hashem Ibrahim Shaileji did not accompay me to that place. I do not remember in which newspaper or when the sale of the decree was advertised. I do not remember and I do not think if Hashem Ibrahim Shaileji was present at the time of sale of the decree in Calcutta. As Hashem Ibrahim Shaileji was not interested in it I therefore think that he was not present at the time of sale of the decree. I cannot say if he had interest in it. So I cannot say if it would be to his interest to be present then. I do not know if Khatija the purchaser of the decree is his wife. The sale was held in our office. Khateja was not personally present in the sale room. I cannot say who appeared for her. Seeing the sale book Exhibit 17 witness says that Yakub Muhammad Kharwa appeared for her. I do not know this man. He did not put in any paper to show it as it was not necessary. I do not know Muhammad Sayed or his address. His address was not given because he was not declared to be the auction-purchaser. I cannot say if he was a servant of Hashem Ibrahim Saileji. I do not

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remember his features. I do not recollect if I saw him(*sic*) or after the date of sale. I do not remember if the purchaser at Barabank was Hanifa Bibi. I do not know if she is daughter of Hashem Ibrahim Shaileji. There might have been other persons present at the auction sale but no other person bid at the sale. The Official Assignee accepted the bid of Rs. 3000 only because the decree could not be executed in Kidderpur or Calcutta as she had no property there. I do not know if Yakub Kharwa is brother-in-law of Hashem Ibrahim Shaileji or if he is brother of Khatija Bibi. I cannot say who paid the purchase money. Hashem Ibrahim Shaileji was not present at the time of execution of the deed of assignment because it was not necessary. There is no record kept in our office to show who were present then. I do not know which attorney drew up that deed or if it was registered. The Official Assignee is not required at the time of its registration. I was not present then I was present at the time of its execution. I do not remember if any one else was present then. I was not present at the time of sale of the jewellery of Khatija Bibi and others. I have not seen the jewelleries I was not present when they were give as security. I have no personal knowledge of Sahera Khatun's dower It appears from the personal schedule of (*sic*) filed by Ibrahim Ismile Shaileji.

Cross-examined by counsel for substituted defendant in Suit No. 1 and substituted plaintiff Nos. 1 and 1a in Suit No. 2:—

Cross-examination.

Seeing the schedule book witness says that there is no claim on promissory notes included in the personal assets of Hashem Ibrahim Shaileji. But there are two debts in this schedule. I cannot say if they are on promissory notes or not. These two claims are included in the statement I under the heading 'debts due to the estate'. In the statement J under the heading 'bills of exchange, promissory notes etc." there is a note of the word 'nil'. In the statement I there are only two debts amounting to Rs. 15,32,000 under the heading 'doubtful debts'. The amount of 12 lakhs due from Juhi Begum is one of such doubtful debts. Hashem Ibrahim Shaileji estimated it to bring only 2 lakhs. This estimate was made by him on 8th December 1921 the date of adjudication. The suit for the other item of Rs. 3,32,000 was dismissed. It was estimated also by Hashem Ibrahim Shaileji to bring 2 lakhs I do not rememder what was realised by sale of movables of Hashem Ibrahim Shailejj valued by him at Rs. 1,150 and who purchased them. He valued his own 3as. 9p. share in the firm of Ibrahim Soleman and Company at Rs. 6000 but it was found to be of no marketable value. That was a private Company. Seeing the statement K witness says that Hashem Ibrahim Shaileji estimated the loss in his share of the insolvent firm at Rs. 2,38,642-13-9p. In the same statement the same figure appears under the heading deficiency as per schedule of affairs. His statement of schedule of affairs shows no asset of any value if the claim against Juhi Begum is excepted because some of the assets mentioned therein proved to be of no value. Except Rs. 1,150 none of the assets proved to be of any value. I do not know what the assets worth Rs. 1,150 actually fetched. He estimated the

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value of surplus security at Rs. 47,500 but the articles proved to be valueless. He had no cash in hand and Rs. 2 only in the bank. Seeing the schedule of affairs of the firm witness says that sum of Rs. 177 was the cash in hand made over to the Official Receiver and that sum of Rs. 140-3-9p. was the cash in bank and that there are amounts of Rs. 1,66,420-2 and Rs. 41,000 and Rs. 8,180-2-3p. and Rs. 42,000 and 15,500 which are shown as monies borrowed from time to time, from 1918 to 1921 and that the amount due to fully secured creditors is Rs. 1,44,500 and that the amount due to 21 unsecured creditors is Rs. 7,47,294-13-9p. regarding debts incurred during the period from 1918 to 1921. Enquiries were made by us from the insolvents to ascertain whether Juhi Begum had property in Calcutta or Khidderpur. I do not know if notice of the application to amend the plaint of the High Court Suit No. 1515 of 1918 or notice of the amended plaint was given to Juhi Begum. The Official Assignee ascertained the particulars regarding any matter from the insolvents before he gave instructions about them to the attorneys. There are letters in our office to show what instructions were given to the attorneys by him. I have not seen such letter for a long time. I do not know if Juhi Begum was examined on commission in that case. I cannot say without reference to records if instructions were given to the attorneys to have her examined on commission. It is not my duty to attend Court at the time of hearing of the case to which the Official Assignee is a party. It is his attorney's duty to attend it. I am a clerk in the office of the Official Assignee in charge of the law and collection departments. My duty is to receive money, to reply to letters under the instruction of the Official Assignee, to advertise for sales, to hold sales outside Calcutta and to do other official works under the direction of my master. There is no officer known as law clerk in respect of High Court cases. I cannot say whether Mr. M. N. Mitra Counsel was engaged by Official Assignee's attorney.

On plaintiffs' petition the witness is re called for further examination.

Re-examination.

Hashem Ibrahim Shaileji was examined before the Registrar of Insolvency according to usual procedure. On the adjudication order being made the adjudicating creditor put the Official Assignee in possession of the properties of the insolvent. I think that Mr. P. C. Dutt an attorney of High Court was in possession of the assets of the insolvents before Official Assignee took possession of them. Mr. P. C. Dutt was the Receiver in some suit in the High Court.

Cross-examined by Counsel for substituted defendant in Suit No. 1 and substituted plaintiffs in Suit No. 2 :—

Cross-examination.

I was not present when Hashem Ibrahim Shaileji was examined before the Registrar. I speak of his examination because of the rule. I was not present when the assets of the insolvents were taken over from Mr. Dutta.

Cross-examined by pleader for daughters of Sayedali :—

With reference to the schedule brought by witness he says that the certified copy produced by defendants does not tally with the original sche-

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dule regarding item No. 9 and tallies with it regarding other items. In the original schedule the item No. 9 is shown as admitted whereas in the certified copy it is shown as disputed. The original schedule and its certified copy except the item No. 9 are marked Exhibit G.

N. B. Banerji,
Offg. Subordinate Judge.
3-4-35.

Kiron Ch. Neogi.
3-4-35.

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No. 46.

Nos. 95-111—Deposition of Mr. Hira Lal Das, witness No. 6 for plaintiff No. 2, dated the 3rd April, 1935 etc.

T. Case Nos 1 and 2 of 1934.

No. 46. Mr. Hira Lal Das, witness No. 6.

Deposition of witness No. 6 for the plaintiff No. 2 taken on solemn affirmation on the 3rd day of April, 1935, before Babu Nikunja Behary Banerji, 3rd Additional Sub-Judge of Alipore.

Examination.

My name is Hiralal Das, son of late Sib Chandra Das. My age is 53 years. I reside at 119 Landsdowne Road, District 24-Parganas where I am a Solicitor.

I am a solicitor of the firm of Messrs. Das and Basu. I know Hashem Ibrahim Shaileji. Without seeing the document I do not remember if he took any deed of assignment from Juhi Begum. I have been practising as a solicitor in the Calcutta High Court for the last 23 years. I know Golam Tahoor an interpreter of the High Court. He is dead. I saw his signature many times. (At this stage there is a pause for about 10 minutes owing to delay in receipt of the deed of assignment from the copying department). Reading the deed of assignment witness says that it was prepared in his office and that he acted on behalf of the assignee. Hashem Ibrahim Shaileji and that it was executed by Juhi Begum by putting her cross-mark in his presence and that he is an attesting witness to it. Babu Satis Chandra Ghose Vakil was the other attesting witness. So far as I remember, he acted on behalf of the assignor. Golam Tahoor the interpreter explained the deed to the lady in my presence. It bears his signature. He was present at the time of execution of the deed. I instituted a suit on behalf of Hashem Ibrahim Shaileji on the basis or this deed of assignment, so far as I remember. During the pendency of that suit he was adjudged an insolvent. After he was adjudged an insolvent the Official Assignee of Calcutta applied for his substitution. I conducted the suit on his behalf. So far as I remember, the suit was withdrawn against defendants other than Juhi Begum against whom the suit was decreed.

Cross-examination.

Cross-examined by Counsel for substituted plaintiffs Nos. 1 and 1a in suit No. 2 and defendant No. 2A in suit No. 1 :—I do not refresh my memory with reference to papers before coming to depose in these suits, because I received the summons only day before yesterday. I do not remember in what capacity Juhi Begum was made a defendant in the former suit. I cannot say

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No 46. Mr. Hira Lal Das, witness No. 6.

and I do not remember now if she was made a defendant in that suit as one of the heirs of her deceased husband or as an assignor. It is not possible for me to remember it now as it was about 17 years ago. I do not recollect what was the amount of claim in the former suit or what was the amount of decree. I think that there was an amendment of the plaint before the decree. I have no full recollection of the nature of the amendment except the fact that the suit was withdrawn against all defendants other than Juhi Begum. I do not remember whether notice was served or not upon Juhi Begum in that suit. At first she entered appearance by an attorney. Her written statement was filed at the time of her examination on commission but the decree was passed against her *exparte*. Several times I asked Messrs. Jones and Company solicitors for her to file her written statement. Her written statement was not filed in Court. It was filed before the commissioner when she was examined on commission at Khiderpur. The suit was disposed of 12 or 13 years ago. So I have faint recollection of the proceedings in that suit. As Messrs. Jones and Co. solicitors of Juhi Begum informed me of having prepared her written statement and sent me a copy of it I called upon them to file that written statement. But they did not file it in Court. I do not remember whether I called for that written statement for the purpose or examining the lady Juhi Begum as a witness for the plaintiff or putting it to her at the time of her examination or whether it was filed on her behalf to serve as her defence in the suit. I do not remember if I wes present when her written statement was actually filed before the commissioner or if she was examined on one day only or on several days. I do dot remember if I attended her examination on all the days at Khiderpur or if she was examined for more than one day. A counsel appeared for the plaintiff in that case during the examination of the lady on commission. I attended the lady's examination but I do not recollect now whether I was present throughout her examination. Seeing the certified copy of the deposition of the lady Juhi Begum on commission witness says that he was present at the time of her examination on 29th May 1935, 20th June 1923, 23rd June 1923, 25th June 1923, and 26th June 1923 as before. According to that record it appears now that I was present during her examination on all those dates. I still have no recollection if her written statement was filed in my presence. I do not recollect that the lady Juhi Begum repudiated her W. S. and also the appointment of Messrs. Jones and Co. or any solicitor on her behalf and also the alleged deed of assignment or if she swore that she had no information of the suit. I do not know if Messrs. Jones and Co are still ding their business as solicitors or if that Company was a firm or if its sole proprietor was Mr. Jones. I know no reason against it. They had an office at No. 6 Old Post Office Street. I do not know whether they have got any office there now. I know that Mr Jones once the proprietor of that firm is dead. I do not know when he died. It may be that he died several yeare ago, in 1923. I am not aware of any person who is now carrying on the business of Messrs. Jones and Co. I cannot say the name of the person who carried on their business in 1923. I do not recollect the year in which the application for amendment of the plaint was made. I cannot say without reference to the records if notice of that application was not served upon Juhi

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Begum. I do not recollect if any order for *exparte* hearing was ever made against the latter. I have not seen the warrant of appointment of Messrs. Jones and Co as solicitors of Juhi Begum. I infer that it was filed in Court. I am not sure of it. I do not recollect if Juhi Begum was represented by her counsel when she was examined on commission or when Hashem Shaileji was adjudged an insolvent or if any copy of the amended plaint was served upon Juhi Begum. I do not know whether it is the practice of the High Court to serve a copy of amended plaint upon the opposite-party concerned. It is the usual practice to serve notice of the application for leave to amend the plaint upon the opposite-party. I cannot say without consulting the record of the suit whether that practice was followed in that particular case. I am the sole proprietor of the firm Dutt and Basu at present since 1924 or so. Before 1923 or 1924 A. N. Basu and I were its joint proprietors. I cannot say if he was also proprietor up to the end of the Suit No. 1515 of 1918. I cannot say without reference to record which of us was in charge of the suit when it was instituted. I was in charge of the suit when Juhi Begum was examined on commission. I continued to be in charge of it up to the decree. It may be that I was in charge of that suit for about two years prior to the date of the decree. Without reference to the records of the suit I cannot say whether the amendment of plaint was made after or before the examination of the lady Juhi Begum on commission. It may be that the application for amendment of plaint was based on the lady's repudiation of the deed of assignment. But without reference to the records of the suit I cannot say anything definitely on this point. I do not recollect it the alleged deed of assignment was produced for the first time during the examination of the lady Juhi Begum on commission. Seeing the certified copy of the deposition of that lady Exhibit I witness says that it might be that the deed of assignment was for the first time produced on the date of her examination on commission before the commissioner. Even seeing that certified copy I cannot say if it was filed for the first time before the commissioner during her examination or earlier than that. Seeing the question No. 42 and the lady's answer to it in the certified copy Exhibit I witness says that it appears that the lady repudiated the deed of assignment. Now I find it from the copy Exhibit I but independently of it I have no recollection of it. I think that this repudiation of the deed of assignment by the lady necessitated the amendment of the plaint in that suit. Even now I cannot say whether the application for amendment for plaint was necessitated by it. I cannot say without consulting the records of the suit whether under that necessity an application for amendment of plaint was actually made in that suit. I do not remember if I consulted any counsel on this point. My counsels were Mr. (now Sir) N. N. Sarkar and Mr. M. N. Mitra and others. Without going through the record I cannot say if I consulted any of them or what advice was given by him on that point. I do not recollect if I made an application for amendment of plaint it that suit by withdrawing the whole of the claim of Rs 12 lakhs against the property of Humayan Kader and by making the claim of only one lakh of rupees against Juhi Begum personally, *i. e.* against the assignor. If such an application was made it is with the record of that suit. Seeing the

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Evidence for plaintiff No. 2.

No. 46. Mr. Hira Lal Das, witness No. 6.

certified copy of the amendment witness says that the original claim in the suit was for a decree for Rs 12 lakhs with interest against all the defendants as heirs of Humayun Kader (Witness takes ten minutes to read the certified copy of the plaint. This claim was for dower due to Juhi Begum from the estate of her husband deceased Humayun Kader. There was no claim made in that suit originally against any of the defendants personally. Seeing the certified copy of the amended plaint Exhibit 1 witness says that the amendment asked for a decree for one lakh of rupees against Juhi Begum personally with interest and costs on the ground that in view of the statement of the lady before the commissioner during her examination on commission the assignment dated 28th September 1918 her been discovered to be void. I find in the certified copy of the amended plaint that there is no reference to the lady's repudiation of the alleged deed of assignment. On reference to the certified copy of Juhi Begum's deposition shewn to me I say that there is nothing in it to show that she repudiated the deed of assignment. I do not recollect if the attention of the Court was drawn to the fact that the lady had repudiated the deed of assignment, at the time of passing the *exparte* decree against her. I do not know whether it is a fact that the lady had repudiated the deed of assignment. To Court—On the witness' attention be called to his previous depositition before the recess he says that his memory fails on this matter. My statement made before the recess that it appears from the certified copy of Juhi Begum's deposition shewn to me that she repudiated the deed of assignment is correct. I cannot say why no reference was made in the amendment of the plaint to the repudiation of the deed of assignment by the lady. The claim of 12 lakhs of rupees made by Hashem Shaileji in the previous suit was based on the deed of assignment. I do not remember the date when the deed of assignment was drawn up by our firm. Without consulting my day book I cannot say when I first received instructions to draw it up. I have not brought my day book because it was not called for. I did not think about the points on which I would have to give evidence before I went to the witness box. I enquired of my managing clerk and he told me that my evidence would probably relate to the deed of assignment of dower executed by Juhi Begum in favour of Hashem Ibrahim Shaileji. This talk I had with him on the day before yesterday when I got summons. I was very busy with other matters then. So I did not refer to my mind much about that matter. A portion of the facts was recollected by me then, such as the facts of execution of the deed, its consideration and the verifieation of the G. C notes with the numbers noted in the deed. I did not recollect anything more then.

To Court :—I made the answer in the third sentence of my deposition in the commencement of my examination-in-chief because I wanted to see the deed of assignment. I did not make any false statement. The witness pauses for about 3 minutes to answer the question whether he remembered when he stepped into the witness-box that the deed on assignment was executed by Juhi Begum in favour of Hashem Ibrahim Shaileji I remember nothing about the deed when the question was put to me then in(*sic*) this morning. I was not

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in the same position then as I was when I had the talk with my managing clerk day before yesterday. It may be that I had no better recollection then as I had this morning. One the day before yesterday at the time of my talk with my clerk it came to my mind for a time about a portion of the facts about the deed of assignment as aforesaid. I have got a very frail memory. Since yesterday I am keeping very indifferent health due to giddiness of head and high blood-pressure. Since that time my memory is failing. I cannot say if my memory of what took place in 1918 is unreliable. I do not know where Mr. G. Tahoor the High Court interpreter lived. He must have explained the deed of assignment to the lady Juhi Begum in Urdu or Hindi language. I cannot distinguish Urdu from Hindi. I know Hindi to some extent. I understood to some extent the language in which Mr. Tahoor explained the deed to the lady. I cannot reproduce what he said while explaining the deed. I cannot explain the deed in the language used by him.

Cross-examined by pleader for daughters of Sayedali :—Since 1910 or 1912 I have known Hashem Ibrahim Shaileji for more than 20 years. My firm acted for him and other members of his firm, next says, other partners of his firm or other members of his family. I never acted against him so far as I remember. I am not on intimate terms with him. One Muhamadan gentleman delivered the summons to me. I did not know him. He came to my office first to enquire about me from my clerk and served the summons on me. I have got the summons with me now. I did not know Juhi Begum personally. Hashem Ibrahim Shaileji gave me her address as No. 13 European Asylum Lane. I received instructions from him to draft the deed of assignment. I do not know to whom the house No. 13 European Asylum belonged. I do not remember to what address I sent the draft of the deed for approval. I have not got it with me. I do not know if Hashem Ibrahim Shaileji wanted the deed of assignment for the purpose of bringing a suit against the heirs of Humayun Kader in the High Court. I did not see the lady Juhi Begum. She was inside a room. She stretched out a portion of her hand for executing the deed. I do not remember if there was a Purdah. I did not know her voice from before. I do not remember who identified her. The lady's lawyer and two or three other gentlemen whose names I do not know were present there. Hashem Ibrahim Shaileji and Satyendra Nath Mallik my managing clerk were also present there. The latter is still in my service. He took part in the verification of the G. C. notes with the numbers noted in the deed. I do not remember who took the G. C. notes and compared them. There is no certificate of verification given in the deed as it is not necessary. Vendors lawyer took part of the verification of notes. I do not remember what part he took or what part my clerk or I took in the verification. The deed was registered on another day but I cannot say without reference to the deed how long after that day it was registered. I cannot say without referring to my day book if I attended the registration or where it was registered.

On plaintiff's petition the witness is re-called for further examination :— This is the draft of the deed of assignment. It was approved by Satis Chan-

Re-examination.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiff No. 2.

No 46. Mr. Hira Lal Das, witness No. 6.

dra Ghose as Vakil for Juhi Begum. The endorsement about approval is probably in his handwriting. The draft was prepared by us. It is a typed copy. The typed address of Juhi Begum was in the draft as No. 28 Circular Garden Reach Road, Khiderpur before it was sent to the vendor's lawyer for approval. That original address was penned through and the address is written in its stead as No. 13 European Asylum Lane after approval. I cannot say at whose instance this particular alteration was made. Seeing the draft of the deed of assignment witness says that the words beginning with 'the draft has been explained and ending with approved the draft' on the right hand side of the last page were inserted after approval. I cannot say in whose hand-writing this endorsement is or at whose instance this endorsement was made. Seeing the draft witness says that it was again sent to the vendor's lawyer for re-approval and was received back with the word' 're-approved'. This is the finally approved draft on the basis of which the deed of assignment was engrossed, executed and registered.

N. B. Banerjee,
Offg. Subordinate Judge,
4-4-35.

Further examined:—Seeing the draft witness says that it bears the signature of Babu Satis Chandra Ghose as Vakil for Juhi Begum and the cross-mark of the latter and the signature of Hamidali Khan *alias* Loudon Aga. None of these signatures was put in my presence. I know the signature of Satis Babu. I recognise his signature as appearing in the draft. The draft is marked Exhibit 18. There were the endorsements on the draft before the deed of assignment was engrossed. After approval of the draft we proceeded with the transaction. Requisitions were made by our firm on questions of title in typed form on 11th September 1918 before preparation of the draft. They bear the signature of out firm. I got answers to these requisitions. Those answers were written by Babu Satis Chandra Ghose Vakil. They are dated 14th September 1918. They bear his signature. They are marked Exhibit 19.

Cross-examination.

Cross-examined by Counsel for plaintiffs Nos. 1 and 1a:—I framed the questions in the requisitions. I do not remember now on what basis they were framed. So far as I remember, they were framed on some documents or on copies of some documents. I do not recollect now who furnished me with such documents. I know Muhammad Toki who used to come with Hashem Ibrahim Shaileji. I do not recollect if any oral instructions were given by either of them apart from documents Seeing the first question in the requisitions witness cannot say if the deed of release dated 28th March 1918 was produced before him and if it was registered or not. On re-reading the question witness gives the same answer. That deed might have been referred to in some other papers that were placed before me from which I might have framed the question. It is not possible for me after 17 years to remember all the details contained in such papers. Reading the 2nd question

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in the requisition witness cannot say if the original deed of release or its copy was seen by him. It may be that the frame of that question shows that the original deed of release or its copy was seen by me. An agreement for sale was entered into before the papers were supplied and then I framed these questions. That agreement was drawn up by our firm under instructions of our client. It was engrossed on a stamp paper. Seeing the deed of assignment witness says that the agreement for sale has not been referred to in it as is generally done. The requisition was sent to the vendor, so far as I remember. Before coming to Court I consulted my day book. Therefore I say so. I think that it was sent with an enclosing letter addressed to him personally. I do not recollect now if it was sent to her through Hashem Ibrahim Shaileji or by a peon book in her address at house No. 48C Garden Reach Road. The requisition and the covering letter sent to her were all written in English without any translation. On seeing the answers to the questions in the requisition witness says that there is nothing in them to show the date of my receipt of such answers. I can say that day on reference to my day book. Those answers were received with a covering letter from Satis Babu Vakil. So I take it that they are in his handwriting. Otherwise I do not recognise his handwriting or his signature. No portion of these answers was written out in my presence. I do not recollect who handed over these answers to me. That person may be Hashem Ibrahim Shaileji or Mahammad Taki or they were sent to me by a peon book. I do not recollect if the amount of dower of Juhi Begum was mentioned as 15 lakhs of rupees in the deed of agreement for sale. I do not recollect if the amount of her dower was mentioned in the deed of agreement ultimately as 15 or 12 lakhs of rupees. I remember that any instructions were about her dower being 12 lakhs. So far as I remember, I was never told that it was 15 lakhs. If it is mentioned in the engross deed as 15 lakhs it must be a mistake. I do not think that there would be such a mistake in an engrossed document. Unless I see the document I cannot answer the question whether such a mistake really appears in it contrary to my instructions I am not in a position to say if the engrossed document is in our office. Most probably it is with the purchaser Hashem Ibrahim Shaileji the draft of the agreement should be in our office. If I am allowed to refer to my day book I may show that my instructions were about 12 lakhs. Seeing his day book witness says that on 10th August, 1918 he received first instructions to draw up the agreement. Seeing the Memo. of consideration witness says that the date of payment is left blank as it is in respect of a draft and that in the engrossed document the date may be found. There is nothing in the draft of deed of assignment to show the date of its preparation. The draft was prepared after I received the answers to my questions in the requisition which was prepared a few days after the date of execution of the agreement for sale. My answer as to the handwriting and signature regarding the endorsement at the last page of the draft is the same as that regarding the endorsement in the requisition Exhibit 19 with this exception that I did not receive any covering letter on 19th September 1918, along with the draft. I received the draft Ext. 18 on 19th September 1918. There is nothing in it

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiff No. 2.

No. 46. Mr. Hira Lal Das, witness No. 6.

to show it but it is shown by my day book. I read my day book in the morning to-day at home. I sent the draft again to the lady with an enclosing letter to have it approved by her lawyer. There is nothing in the draft Ext. 18 to show that such enclosing letter was sent to her. I received the draft back with an enclosing letter from Satis Babu Vakil either on 20th September or on 21st September 1918. My answer regarding the handwriting and signature in the endorsement at the bottom of the back sheet of the draft Ext. 18 is the same as that regarding those on the requisition.

N. B. Banerjee.

Cross-examined by pleader for defendants daughters of Sayeali:—I do not recollect if any paper or document was made over to me at the time of drawing up of the deed of assignment. I do not recollect if the deed of Juhi Begum's dower was ever made over to me. I cannot admit or deny the suggestion that her dower was Rs. 50,000 only. In the entry dated 10th August 1918 in my day book there is mention of 12 lakhs of rupees as her dower regarding the instructions given to me. There is no reference in my day book to show that the deed of dower was produced before me. I do not know Satis Babu Vakil personally. I saw him once in September 1918 when the deed of assignment was executed.

N. B. Banerji,
Offg. Subordinate Judge,
6-4-35.

H. L. Das,
6-4-35.

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No. 47.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suit No. 2 of 1934.

No. 47. Verified petition on behalf of the defendants for the examination of Serajul Ulema Mirza Altaf Hossain *alias* Mufti on commission, filed on the 4th April, 1935 (with Medical certificate).

Nos. 215-218—Verified petition on behalf of the defendants for the examination of Serajul Ulema Mirza Altaf Hossain alias *Mufti on commission (with medical certificate).*

By

Syed Ilim Mea,

Pleader.

In the Third Court of the Additional Subordinate Judge of 24-Parganas at Alipore.

T. S. No. 2 of 1934.

Mahmuda Bibi and another ... *Plaintiffs,*

versus

Nawab Jehan Ara Jafri Begum and others ... *Defendants.*

The humble petition of Nawab Jehan Ara Jafri Begum and Nawab Kishwar Ara Sadeqa Begum, defendants in the above-mentioned suit

Most respectfully sheweth :—

1. That Serajul Ulema Mirza Altaf Hossain *alias* Mufti Saheb of Garden Reach is a material witness in the above suit for your petitioners as he is a witness to the Wakfnama dated 14th June 1917 executed and registered by the late Prince Kamar Kader Bahadur.

2. That your petitioners accordingly cited the said Serajul Ulema as a witness and served summons on him through Court but on the duplicate summons he put his signature with the remarks that he was ill and unfit to attend Court.

3. That thereupon your petitioners caused enquiries to be made and come to know that the said Sirajul Ullama Mirza Altaf Hossain *alias* Mufti Saheb is suffering from dilation of heart with fever and is unfit to attend Court or do any physical exertion. The certificate granted by Dr. Abdul Ghaffar M. B. physician is annexed herewith marked "A".

Your petitioners accordingly pray that your honour may graciously be pleased to order

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suit No. 2 of 1934.

No. 47. Verified petition on behalf of the defendants for the examination of Serajul Ulema Mirza Altaf Hossain *alias* Mufti on commission, filed on the 4th April, 1935 (with Medical certificate).

examination of the said witness by a commission to be appointed by the Court.

And your petitioners as in duty bound shall ever pray.

Affidavit.

I, M. Mukarrum Ali, son of the late Wajid Ali, aged about 37 years, residing at 11, Rangalal Street, P. S. Watgunge, Kidderpore, District 24-Parganas, do hereby solemnly affirm and say :—

1. That I am the Tahsildar of the Wakf Estate of the late Prince Kamar Kader Bahadur of which the petitioners are Mutwallis. This is true to my knowledge.

2. That I am acquainted with the facts mentioned in the petition marked "A". This is true to my knowledge.

3. That the statements in para 1 are true to the best of my information and belief while those in paras 2 and 3 are true to my knowledge.

M. Mukarram Ali.

Dated, Alipore,
The 3rd April, 1935.

Known to me,
Birendra Nath Kanthal,
Pleader's Clerk,
Card No. 43.
3-4-35.

Solemnly affirmed before me this day.
(Illegible),
Commissioner of Affidavits.
3-4-35.

3rd Sub-Judge's Court,
24-Parganas.

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(Medical certificate granted by Dr. Abdul Ghaffar to Serajul Ulema Altaf Hossain Mufti Hairi).

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suit No. 2 of 1934.

No. 47. Verified petition on behalf of the defendants for the examination of Serajul Ulema Mirza Altaf Hossain *alias* Mufti on commission, filed on the 4th April, 1935 (with Medical certificate).

Dr. Abdul Ghaffar, M. B.
Reg. No. 9260.
Late Clinical Assistant,
Calcutta Medical College Hospitals.
Medical Officer and Pathologist,
Islamia Hospital, Calcutta.

The Ruby Pharmacy,
Akra Road, Garden Reach.
Calcutta 193 .

Certified that Serajul Ulema Moulana Altaf Hossain Mufti Hairi has been suffering from dilatation(*sic*) of heart with fever. He is advised absolute rest in bed and is hence quite unfit to attend Court or do any physical exertion.

A. Ghaffar.
28-3-35.

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No. 48.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 112-114—*Deposition of Kasim Hossain Nanavaiti, witness No. 7 for plaintiff No.* 2, *dated the* 5*th and* 6*th April* 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Cases Nos. 1 and 2 of 1934.

Evidence for plaintiff No. 2.

No. 48. Kasim Hossain Nanavaiti, witness No. 7.

Deposition of witness No. 7 for the plaintiff No. 2 taken on solemn affirmation on the 5th day of April 1935, before Babu Nikunja Behary Banerji, 3rd Additional Sub-Judge of Alipore.

Examination.

My name is Kasim Hossain Nanavaiti, son of Hussain Md. Nanavaiti, by caste———. My age is 34 years. I reside at 16A Blockman Street, District 24-Parganas, where I am a landholder.

To Court:—I have filed the affidavit yesterday in support of the application made by plaintiff No. 2 explaining the cause of delay in the production of the draft of the deed of assignment.

Cross-examination.

Cross-examined by Counsel for substituted plaintiffs:—I do not know English. The contents of the affidavit were explained by plaintiff No. 2's pleader's clerk. I do not know his name. I call him Mohurer Babu. I made the affidavit regarding two papers which came from the custody of the clerk of the attorney witness who was being examined yesterday. We had no notice of the existence of such papers before that time. I cannot say what is written in the affidavit. I look after the case on behalf of plaintiff No. 2. I do not remember if I attended Court at the time of filing of the plaint on behalf of Khatija Bibi. I do not remember the date from which and for how long I look after the case. I do not remember if I have got any power of attorney from Khatija Bibi. I regularly attended Court in connection with her case since its institution. Her suit was instituted about 2 or 3 years ago. She has other persons also to look after her case. I do not remember what acts were done by me before March last while looking after her case on her behalf. I do not remember the acts done by me since March last save and except the affidavit filed by me. In the affidavit the statements were written by plaintiff No. 2's pleader under my instructions. The witness points out the pleader seated in Court-room but cannot name him. I gave some instructions to both him and Jotin Babu. They are embodied in the affidavit. The witness pauses for three minutes to answer the question as to what he instructed to plaintiff No. 2's pleaders regarding the two papers that were produced by the clerk of the solicitor witness yesterday. I do not remember what I said to them then.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiff No. 2

No. 48. Kasim Hossain Nanavaiti, witness No. 7.

Those papers relate to purchase of Khatija Bibi from Juhi Begum. I do not remember what Khatija Bibi purchased from Juhi Begum. I do not remember the subject matter of Khatija Bibi's suit. I do not remember to what those two papers relate. I look after the case of Khatija Bibi. I do not remember if Hashem Ibrahim Shailiji also looks after it. I do not remember whether anybody enquired about any of these papers from anybody prior to yesterday. I saw those papers yesterday when they were found in the custody of solicitor's clerk. I do not remember what are the contents of those papers. I do not remember, next says, I did not see those papers before yesterday. I do not remember if those papers had been called for on behalf of plaintiff No. 2. They were shewn by the clerk of the solicitor witness to plaintiff No. 2's pleader yesterday. (As it is Friday the Court work is suspended at 12-30 P. M. upto 2 P. M. according to Government circular).

N. B. Banerji,
Offg. Sub-Judge.
5-4-35.

Further cross-examined:—Ujir Ali does not look after the case of Khatija Bibi. Her pleader informed me day before yesterday when those papers were produced from the custody of solicitor's clerk that those papers would be required by him to be filed in Court. I did not ask him as to how they were important. I do not remember what questions were put by Satis Babu Advocate for the daughters of Syed Ali to the solicitor witness regarding those papers as I was then present in the Court-room occasionally. I did not come to know afterwards if anything came out of such questions.

Examined by plaintiff No. 2's pleader:—
I feel some difficulty in uttering Urdu words

N. B. Banerji,
Offg. Sub-Judge.
6-4-35.

Read over, explained and admitted to be correct.

(Illegible),
B. C.
6-4-35.

Kasim Hossain Nanavaiti.

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No. 49.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 115-121—*Deposition of Mangaldas Gobordhandas Mehta, witness No.* 8 *for plaintiff No.* 2, *dated the* 6*th and* 8*th April*, 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Suit Nos. 1 and 2 of 1934.

Evidence for plaintiff No. 2.

No 49. Mangaldas Gobordhandas Mehta, witness No. 8.

Deposition of witness No. 8 for the plaintiff No. 2 taken on solemn affirmation on the 6th day of April 1935, before Babu Nikunja Behary Banerji, 3rd Additional Sub-Judge of Alipore.

My name is Mangaldas Gobardhandas Mehta, son of Gobordhandas, by caste ——. My age is 48 years. I reside at Chitpur Road, District 24-Parganas, where I am a merchant.

Examination.

I know Hashem Ibrahim Shailiji. Mahmuda Bibi is his daughter. The former endorsed two hand-notes in favour of the latter in my presence in Guzrati character on 25th September 1920. He signed the endorsements type-written in English in my presence. The endorsements are marked Ext. 13c and Ext. 13d. After endorsements Hashem Ibrahim Shailiji made over the hand-notes to his son-in-law Golam Hossain in my presence.

Cross-examination for plaintiffs Nos. 1 and 1(a).

Cross-examined by counsel for plaintiffs Nos. 1 *and* 1*a*:—I used to look after the Wakf estate then. I have ceased to do so for the last three years. I carry on a perfumery business at house No. 149, Lower Chitpur Road. Hashem I. Shailiji lives at premises No. 8, Amratala Lane. I pay no income-tax. I pay Rs. 16 as rent for the room I occupy as my residence. I sell perfumes in that room. At the time when the endorsements were made my salary was Rs. 70 per month. I used to get Rs. 30 from each of two Wakf estates one of which was created by Suleman Ibrahim Shailiji father of Hashem Ibrahim Shailiji and the other of which was created by Ibrahim, Soleman and Company. I had to do the works of management with the assistance of a Durwan. I did my work at house No. 1, Amratala Lane which was the place of business of Ibrahim Soleman and Company. About 25 or 30 clerks used to work in that office on behalf of the firm. Clerks who got higher pay than myself used to work under the Company. I had no concern with the office. There were men in service of the firm senior to me. I do not know who among the proprietors of the firm looked after it or whether Hashem Shailiji did so as I had no concern with the business. Both Hashem Shailiji and I used to work at house No. 1, Amratala Lane. He was one of the proprietors of the firm. He was one of the five trustees of the Wakf estate without any remuneration. Both Wakfs were purely charitable trusts. Hashem Shailiji was also one of the seven trustees in respect of other Wakf estate. There were 7 or 8 rooms in which clerks used to sit. I used to sit in one of them. Hashem Shailiji used to sit in another of such rooms.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1931.

Evidence for plaintiff No. 2.

No. 49. Mangaldas Gobordhandas Mehta, witness No. 8.

I sat alone in one of the rooms. In 1916 or 1917 I entered service of the Wakf estate. I do not know what was the age of Mahmuda Bibi then. She lived then in her father's house. House No. 1, Amratala Lane belonged to the Company. It is sold off. I do not know who is its purchaser. The house in which Hashem Shailiji lives belongs to Wakf estate. He pays rent for it. I do not know how much he pays as rent. Golam Hossain did not do any business. I do not remember if I saw him in Calcutta during the last 5 or 6 years. I went to his room casually for some Wakf business. I went to his room on the date of endorsements on the hand-notes as I used to go there several times in course of every day. I enquired of him about a case relating to Wakf estate that was pending then. He told me what I enquired about. He began to read the written statement I shewed to him. So I sat down for about half an hour. It was prepared by Jnan Mukherji, pleader. It was written in English. Hashem Shailiji can read and understand English. After perusal he approved of the written statement. After approval I did not stay in his room. During the interval he was reading the written statement. Golam Hossain came in. The two hand-notes were lying by the side of Hashem Shailiji then with the typed portions of the endorsements already thereon. I did not hear the talk that took place between him and Golam Hossain. After that conversation he signed the endorsements and handed over the endorsed hand-notes to him, After signatures in the endorsements there was no other conversation between them. Golam Hossain left the place with the hand-notes. I do not know if he paid any money to Hashem Shailiji on account of the hand-notes. I have seen the latter sign many papers on many occasions as I used to go often to his room. I do not remember if he signed any other paper than the endorsements on that day. I have not seen him sign any document in favour of any relation of his. I cannot say any reason why he made the endorsements in my presence There is nothing in the hand-notes to show that I was present at the time of the endorsements. I sat at a distance of 6 or 7 cubits from him at the end of a table in his room then. I could not read the hand-notes from that distance. I heard Hashem Shailiji say to Golam Hossain, 'Go, and give the hand-notes to Mahmuda Bibi'. So I say that they were hand-notes. There is nothing in the hand-notes shewn to me to-day except the signatures of Hashem Ibrahim Shailiji to enable me to say that these were the identical hand-notes that were made over by him to Golam Hossain. (The last figure in the year noted in each of the hand-notes is made thick by ink). It was so written in my presence. It is not true that some other digit was converted into zero of the figure '20'—(On examination of the last figure in '20' in the endorsements it appears that there was another digit which as converted into 'O'—N. Banerji). (The last digit in the date of the first endorsement about payment of Rs. 750 on the back of the hand-note, dated 19th June 1919 appears to have been penned through. There are no initials against it or against the zero in the figure '20' below the signatures of Hashem Ibrahim Shailiji—N. Banerji).

N. Banerji,
Offg. Sub-Judge.
6-4-35.

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Further examined:—There was a Secretary of the Wakf estate in which I served. I used to take his instructions for my works. I do not remember who was its Secretary in 1920. Ismile was not the Secretary when I gave up service. Ahmad Ibrahim Shailiji was the Secretary of one of the Wakf estates when I gave up service. Soleman Musaji Shailiji was the Secretary of the other Wakf estate. I gave up service in 1932. Hashem Ibrahim Shailiji's brother was Ahmad Ibrahim Shailiji. I do not remember the year when the latter was the Secretary. Before him Ismile was the Secretary of one of the Wakf estates when I joined service, so far as I remember Hashem Ibrahim Shailiji was then the Secretary of the other Wakf estate which was created by a firm. He continued to be so for about 10 years. Ismile Ibrahim Shailiji remained Secretary of the other Wakf estate for 5 or 6 years after I joined service. That Wakf was created by his father. Now I remember, that Ismile Ibrahim Shailiji and his brother Hashem Ibrahim Shailiji were the Secretaries of the two Wakf estates in 1920. I do not remember to what case the written statement that I went to show Hashem Shailiji related. That written statement was not filed in court in that case. I do not recollect the reason why it was not filed. It related to a case which concerned the Wakf created by the firm. I do not remember the name of the person who brought that case. It related to a suit for rent which was to be instituted against a tenant of the shop below the Mosafirkhana. I do not remember the name of that tenant. Next says, it was not a written statement but a draft of a plaint prepared by a Vakil. I do not remember the amount of rent payable by the tenant, at which the plaint was drafted.

Cross-examination for defendants Nos. 3 & 4.

Cross-examined by pleader for defendants Nos. 3 and 4:—I did not take the two hand-notes in my hands and see them I did not see them either before or after that day except that I saw them in court during my deposition. I do not know when the dates were changed on the back of the hand-notes. I remember the date of endorsements by Hashem Shailiji as in 1920. I do not remember the date of my appointment or the date when my services were dispensed with. I did not make any note of the date of the endorsements. I do not remember any particular item of work done by me on the date of endorsements. I do not remember the date when Hashem Ibrahim Shailiji was adjudged an insolvent. I do not remember when the company went into liquidation. I remember the date of endorsements because I got the draft of the plaint approved by Hashem Ibrahim Shailiji on that date. The draft of the plaint might contain a date. I do not remember it exactly. I tore out that draft after 4 or 5 days as the plaint was not filed. I do not remember the date when it was torn off. I did not receive any summons to give evidence in this case I have come here at the request of Kasem Hossain Nanavati. He made the request on Friday last in the house of Soleman Musa Shailiji, at No. 26, Amratola Street. He is a full cousin of Hashem Ibrahim Shailiji. He asked me if I remembered the date of endorsements by the latter. On my answer in the affirmative he requested me to give evidence in this case. I did not speak to him about the date of endorsements on that day. As Soleman Saheb sent for me I went to his house. I met my travelling expenses to court

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiff No. 2.

No. 49. Mangaldas Gobordhandas Mehta, witness No. 8.

house from my pocket as Nanavati has promised to pay them. I do not remember the premises No. 8/1, Amratala Lane. Hashem Ibrahim Shailiji used to live at premises No. 8A, Amratola Lane with Mahmuda Bibi. I do not remember the old number of such premises. So long as I was in service, I do not remember if they lived in premises No. 8/1, Amratola Lane. I never saw them live in one-storied tin-roofed house. House No. 132, Lower Chitpur Road was the Hamidiya hotel. That hotel does not exist now. There is a shop in its place there. I do not know if it is Lucknow Stores. That shop is in downstairs and stands on Chitpur Road. The residential house to which that shop appertains is numbered 130, Lower Chitpur Road. I do not know whether the shawl dealers lived in the upstairs above that shop.

N. Banerji,
Offg. Sub-Judge.
8-4-35.

Mangal Das Gobordhan Das Mehta.

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No. 50.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 122-179—*Deposition of Syed Md. Hashim Ali Khan, witness No.* 9 *for plaintiffs Nos.* 1 *and* 1(*a*), *dated the* 8*th April* 1935 *etc.*

Title Suits Nos. 1 & 2 of 1934.

T. Suit Nos. 1 and 2 of 1934.

Evidence for plaintiffs Nos. 1 and 1(a).

No. 50. Syed Md. Hashim Ali Khan, witness No. 9.

Deposition of witness No. 9 for the plaintiffs 1 and 1(a) taken on solemn affirmation on the 8th day of April 1935, before Babu Nikunja Behary Banerjee, 3rd Addl. Sub-Judge of Alipore.

Examination.

My name is Syed Md. Hashim Ali Khan—plaintiff No. 1 son of Nawab Zaighudaula Zainul Abdin, by caste ———. My age is 48/49 years. I reside at——— Pargana——— District———. My occupation is———.

My grandfather was Nawab Ali Naqui Khan. He was the Prime Minister of Wajid Ali Shah ex-King of Oudh. His daughter Nawab Akhtar Mahal was one of the Nika wives of the king. Prince Kamar Kader's wife Shah Banu Amir Begum was the first cousin of my mother. I used to call her Thala Anuna (aunt or mother's sister). Her children who were married were Saiyed Ali (the eldest), Mahsima Begum *alias* Bari Begum, Chunni Begum, Achhu Mirza and Juhi Begum *alias* Zinnat Arrah Zainab Begum. Saiyedali married thrice—first daughter's daughter of Nawab Umda Begum of Bhagalpur, whom I used to call Bhabi, second, the daughter of Muhammad Saheb of Lucknow who came with the ex-King of Oudh to Calcutta and third, the widow who is alive, whose name I do not know but who is called by me Bhabi. He had by his first wife only one daughter Munni Begum who died leaving a son named Chhangu Agha and who had been married to Hamidali Khan *alias* Loudon Aga son of Saiyedali's sister Masima Begum. The latter was married to Nawab Mahommadali Khan *alias* Chhote Aga of Lucknow. She had three children who are still alive *viz.* Noyasi Begum, Amjadali Khan *alias* Munni Aga, Hamidali Khan *alias* Loudon Aga. Chunni Begum was married to Soleman Mirza one of the grandsons of Wajid Ali Shah ex-King of Oudh Juhi Begum was first married to Humayun Kadar *alias* Nunuh Huzur another grandson of the ex-King and son of my father's sister Nawab Masarrat Ara Begum—Chunni Begum died childless—Achha Mirza was married to the daughter of my sister Roshan Ara Begum who was married to Prince Kambakt one of the sons of the ex-King. He died childless in the life time of Prince Kamar Kader. Masima Begum and Chunni Begum also died during the lifetime of Prince Kamar Kader—Chuni Begum died in 1912, so far as I remember—Humayun Kadar the first husband of Juhi Begum died in March 1918—I first married Nawab Jakia Begum grand-

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1931.

Evidence for plaintiffs Nos 1 and 1(a).

No. 50. Syed Md Hashim Ali Khan, witness No. 9.

daughter of Prince Suleman Kadar brother of the ex-King in 1903. My first wife died on 1st October 1914. Before my marriage with her there was a negotiation for my marriage with Chunni Begum and for marriage of my younger brother Saiyad Muhammad Quasim Ali Khan with Juhi Begum before 1903. Such negotiation fell through. My brother was then married to my 1st wife's own youngest sister Safia Begum. My first wife and her sisters were the daughters of Ummatul Fatima Begum my mother's first cousin. Nawab Muhammad Abid Khan Mother of the latter and my mother were sisters. My mother's father was Nawab Medi Ali Khan. Nawab Amir Begum wife of Prince Kamar Kadar was the daughter of latter's own sister Nawab Jina Begum. I first came to Calcutta in 1895 or 1896. I was born in the year 1886 or 1887 on 14th July. My father was alive when I came to Calcutta in 1895 or 1896. I accompanied my parents to Calcutta then. My father had property in Calcutta. He owned house No. 13, Russel Street. When we first came to Calcutta we put up in a rented house of a hide-merchant. On that occasion I met Nawab Amir Begum and her husband Prince Kamar Kader for the first time. My mother also paid them a visit. We stayed here for about 1½ months on that occasion although I do not remember the exact period of my stay with certainty. My father died on 1st August 1898. After that I used to frequent Calcutta from time to time. Before my first marriage I used to stay with my brother-in-law Prince Kambukt. He died in 1915. My sister Roshanara Begum died in 1902. When I came to Calcutta first after her death I stayed with my brother-in-law Kambukt to whom I had come on a visit of condolence. Roshanara Begum left some children who were with him. After that occasion whenever I came to Calcutta I stayed with my aunt Amir Begum. At that time Juhi Begum used to live with her parents in premises No. 123 Circular Garden Reach Road, which was known as Khusro-Manzil. Her first marriage took place long after my first marriage and after the death of Chunni Begum and after the death of my first wife, so far as I remember. Her first husband Humayun Kader had other wives living when he married her. He had several children by them but no children by Juhi Begum. I am not sure if he left a son but I am sure that he left several daughters Besides Juhi Begum two of his wives survived him, so far as I remember. I came to Calcutta about 1½ months after the death of Humayun Kader. I went to condole(?) with latter's family in Atabag in Metiaburz where Humayun Kader lived. There was a funeral Majlis relating to his death. I attended it. I also paid a visit to my aunt Amir Begum on that occasion. At that time Juhi Begum was at Atabag the family residence of her deceased husband. Then I went back to Lucknow. Up to that time Juhi Begum had not returned to her parent's house. On that occasion I had to stop for a few days only in Calcutta.

N. B. Banerji,
Offg. Sub-Judge.
8-4-35.

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Further examined :—Then I visited Calcutta in July or August in the racing season. I met Muhmmad Toki at that time. He was then a Darogah or steward in the service of Amir Begum, living at premises No. 28 Circular Garden Reach Road. I knew him from before. I have seen him even in Calcutta before this. I first met him in Lucknow in 1907 or 1908 when he lived there. He was in service then but I do not know under whom he was serving at that time. I first met him at the house of a pleader Pandit Janakinath. I had then a case pending in the Court of the Subordinate Judge at Lucknow. He asked me to engage Pandit Jankinath as a pleader in that case. He used to treat him as his Malik. Pandit Janakinath also used to treat him very liberally. I first met Taki in the house of Golam Hossain Arif in Calcutta. I met him along with Pandit Janakinath and Hashem Ibrahim Shailaji and others. This was in 1911. He appeared to be on intimate terms with Hashem Ibrahim Shailiji as well as Pandit Janakinath. The mother of Golam Hossain Arif was distantly related to my father. I have friendly connections with Golam Hossain's younger brothers. Toki went to Calcutta on a casual visit then and returned to Lucknow in 1911. After that he once came to Calcutta with the brothers Hamidali Khan and Amjad Ali Khan and their mother. Subsequently he entered the service of Nawab Amir Begum. He was in her service for about 2 years till 1918. He had gained great confidence of her. She used to have particular regard for him. He was the first person to suggest my marriage with Juhi Begum. This was when I came to Calcutta on the 2nd occasion in July or August 1918 after the death of Juhi Begum's 1st husband Humayun Kadar. Toki received Rs. 3000 from me as a bribe for my marriage with Juhi Begum although he demanded Rs. 5000 at first. My mother negotiated my marriage with Juhi Begum through Prince Sultan Mirza one of the sons of the ex-King. He was not able to settle the marriage. He met me in Calcutta and told me that he had received only evasive reply to his proposal of my marriage. Toki resented other persons interference with the negotiations for my marriage with Juhi Begum made by him. He assured me that marriage would be impossible unless his demand was met. Sultan Mirza was also of opinion that without payment to Toki the marriage would be impossible. Eventually I agreed to pay Toki Rs. 3000. From that time Toki was the chief negotiator of that marriage. I paid him Rs. 500 before the marriage and the balance of Rs. 2500 by two instalments after the marriage. Toki brought about my marriage with Juhi Begum in consideration of Rs. 3000 received by him. I was married on 20th December 1918. I did not know before hand the date of my marriage being 20th December 1918. I was attending the races with my brother on 20th December 1918 when Muhammed Toki called me away for the marriage, telling me that my marriage was fixed on that very day. After the marriage I lived with my wife Juhi Begum for about 2 weeks at premises No. 28 Circular Garden Reach Road at Kidderpur. Then I went back to Lucknow. I returned to Lucknow because mother of Juhi Begum requested me to bring my own mother to take Juhi Begum to her place. Before I could bring her I received telegraphic report of death of Prince Kamar Kader. I do not remember when I went to Lucknow in January 1919.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiffs Nos. 1 and 1(a).

No. 50. Syed Md. Hashim Ali Khan, witness No. 9.

It may be on 5th or 7th January. I returned to Calcutta on 1st or 2nd of February 1919 and stayed there for about 2 or 3 months. I know that Hashem Shaileji obtained a decree against Juhi Begum. He did not obtain the decree honestly but by fraud. This fraud was committed in collusion with Muhammad Toki and Hamid Ali Khan *alias* Loudon Aga who is present in Court room now. Juhi Begum told me that she had executed a power of attorney in favour of Muhammad Toki and Loudon Aga for realising her pensions. She had no right in the properties left by her first husband Humayun Kader because she relinquished all her rights by a deed of release. This I learnt from her. The release was made in March 1918 immediately after the death of her first husband. She gave up all her claims for any inheritance as well as her dower. She did so out of consideration for the children of her first husband who was also her first cousin. She did not execute any deed of assignment in respect of her dower against the estate of her first husband. She received no money as consideration of any such assignment. It is not true that she executed any deed of assignment for her dower in favour of Hashem Ibrahim Shaileji or received a lakh of rupees as alleged consideration for the same. Juhi Begam never lived in the(*sic*) European Asylum Lane, but her brother-in-law Soleman Mirza husband of Chunni Begum lived in premises No. 13 in that lane on rent from 1917 to 1919. I used to go there. Muhammad Toki never lived in that house. Neither Juhi Begum nor I had any information of the suit which Hashem Ibrahim Shaileji brought to recover 12 lakhs of rupees from the property left by Humayun Kader in the Calcutta High Court at any time in 1918 or 1919 or up to 1922 (objected to by pleader for plaintiff in suit No. 1 N. Banerji). I was in Calcutta in 1923 from January to March. I left it in April. I again returned to Calcutta in the 1st week of July 1923. Up to that time I had no information of the suit. I learnt about it in July 1923 in early part of its first week. Juhi Begum learnt about the suit when she was examined as a witness on commission in that suit. She told me that Muhammad Toki engaged a solicitor on her behalf on the strength of her power of attorney. She came to know of this when she was examined on commission. I was not present when she was examined. She was examined on commission in May and June 1933. I came to know it on examination of papers. Juhi Begum did not sign any written statement in that suit. I had no information of any written statement having been prepared on her behalf prior to July 1923. Juhi Begum was not aware of any such written statement until she was examined on commission. On 15th July 1923 I left for Lucknow with my wife Juhi Begum. Both of us remained in Lucknow till 1st or 2nd of January 1924 when we returned to Calcutta. On arrival at Calcutta I came to know that she had been examined on commission as a witness in that suit. I learnt this from her. On my enquiry I learnt from her that the suit in which she was examined on commission had been dismissed. Neither she nor I had any informetion after 15th July 1923 that any application had been made in the suit for amendment of the plaint, so as to seek a decree for one lakh of rupees against Juhi Begum personally, after withdrawing the suit against the estate of Humayun Kader. We had no information up to end of 1923 that any *exparte* decree for one lakh of rupees plus

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interest and costs had been passed against her personally in that suit. During the years succeeding my marriage my wife Juhi Begum did not appear to have with her any sum exceeding Rs. 100. So far as I know, she never had any cash exceeding Rs. 1000 up to 1923 or even after 1923. I must have known if she ever received any such cash during that time. My mother's full sister who was living in Lucknow died in December 1930. Juhi Begum went with Amjad Ali Khan and a maid-servant to Lucknow to condole her death. It was in first week of February 1931. She then stayed with me as any(*sic*) aunt lived and died at my house. She remained there for 4 days only and returned to Calcutta on 5th day. She told me that she had instituted a suit through Ujirali for her share of her father's property against her brother Saiyedali's property, and asked me to go to Calcutta to look after the case. She expressed her intention before me to engage her old pleaders Satis Babu and Amulya Babu but the suit was instituted through Bhupen Babu pleader under her instructions (objected to by defendants Nos. 3 and 4's pleader—N. Banerji). I could not come to Calcutta at that time as owing to the death of the sister of my mother she was much affected and had fallen ill She is about 80 years old now. I told my wife that I could not come to Calcutta for those reasons but that I would go there later on. She appeared to be offended at this answer of mine. Since that time I never met her before her death. She could neither read nor write. She could not even sign her name. She was a Purdanashin lady. She was strict in the observation of Purda system. Nawabjan was the son of the foster-sister of Prince Kamar Kader. Her name was Bismulla(*sic*) Begum. I always saw her living in the house of the Prince Kamar Kader. I do not know where she died. Her son Nawabjan was born and brought up in the house of Prince Kamer Kader. Nawabjan is alive and of the same age like myself. None of the daughters or daughters-in-law of Prince Kamar Kader appeared before Nawabjan when he attained the age of 13 or 14 years. I saw Ujir Ali from my childhood. He was 15 or 16 or more years old when I first saw him. The Purdanashin ladies of the family of Prince Kamar Kader were never seen by me to appear before him. Neither any of the daughters nor daughters-in-law of the Prince ever appeared before him in his adult age. It is false for Ujir Ali to state that Juhi Begum or her mother Amir Begum ever appeared before him. My wife Juhi Begum was hard of hearing. She could not hear speeches in ordinary tone. She could hear loud voices only. She was dull-headed. She used to speak in Urdu. She did not know Bengali or Hindi. On the translated portion of the deed of assignment written by P. W. 3 Ganesh Chandra De being read over by Satis Babu Vakil at the request of the Counsel of plaintiffs Nos. 1 and 1a witness says that Juhi Begum was not capable of understanding the meaning and language of that portion as explained by the solicitor to her. Juhi Begum was of Shamala (or dark) complexion. She had possession of Calcutta property of Prince Kamar Kader after his death. Her mother Amir Begum had also possession over it. Both of them used to realise the rents of the houses and the lands left by Prince Kamar Kader including those in suit. Saiyedali lived in premises No. 123 Circular Garden Reach Road. (Objected to by pleader for defendants Nos. 3 and 4—N. Banerji). So far as I think, Juhi Begum lived in premises

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiffs Nos. 1 and 1(a).

No. 50. Syed Md. Hashim Ali Khan, witness No. 9.

No. 28, Circular Garden Reach Road so long as her mother was alive and after latter's death she began to live in premises No. 11, Rangolal Street till her death. After the death of Prince Kamar Kader the grove(*sic*) in suit at Lucknow was entered in the revenue registers as in the possession of his widow Amir Begum to the extent of $\frac{1}{3}$ share and of his son Saiyedali to the extent of the $\frac{2}{3}$ of the remainder and of his daughter Juhi Begum in respect of her $\frac{1}{3}$ share. Mutation of names stood in this way so long as Amir Begum was alive. Subsquently latter's $\frac{1}{3}$ share was recorded by mutation in the names of Saiyedali and Juhi Begum in proportion of $\frac{2}{3}$ and $\frac{1}{3}$ respectively. After the death of Juhi Begum her share was entered by mutation in the names of Saiyedali and myself in equal shares. After the last mutation Saiyedali made an application to set aside the previous mutations and to have his own name as a Mutwalli on the ground that the said grove was included in the deed of Wakfnama in suit. His application was rejected by Lucknow Court and he was referred to a civil suit. I have filed the revenue papers relating to these mutations and rejection of Saiyedali's application. I am in possession of my share of this grove. I am not in possession of the two houses at Lucknow. One of the two houses is not traceable. The other house is in Chikmandi has fallen down. The bare land is lying vacant. It is not in the possession of anybody.

N. B. Banerjee,
Offg. Sub Judge.
9-4-35.

Cross-examination for plaintiff No. 2.

Cross-examined by pleader for plaintiff No. 2:—I, my brother and mother have sold one house No. 13 Russel Street in 1914 or 1915, so far as I remember Mr. Hyam is the purchaser. Gregory Jones or Jones Company were his solicitors in that transaction. I do not remember if there was any solicitor on our behalf. It was sold at Rs 3,40,000. It was subject to a mortgage in favour of Madholal Doogar for about Rs. 19,000. There was a debt to the purachaser from whom I borrowed money for conducting litigation. I do not remember the amount of that debt. Out of the purchase money that debt was paid off. I got some cash in my hands out of the sale proceeds, to the extent of Rs. 70,000 or Rs. 75,000 in my brother's and my mother's shares. I handed over that amount to my mother. I have not got any account book to show the receipts and disbursements. Sultan Mirza son of Negro slave girl of my grandfather claimed to be a son(*sic*) of my father. There were two cross-suits one brought by me against him and the other instituted by Sadiq Hosain against me and others. These suits continued up to 1916. Both went up to the Privy Council. Mr. Jahur Ahmad was advocate for me in both the suits, so far as I remember. In the Privy Council Mr. Sultan Mirza was successful and was declared as a son of my father and I lost my suit. I had another full brother named Kasim Ali Khan. He died on the 14th October, 1923, so far as I remember. My father left many other properties at Lucknow and other places other than those in Calcutta. I cannot say if he sold all his properties.

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Next says, I do not know if he sold some of the properties but I got his properties by right of inheritance, such as (1) one Jagir consisting of several villages, (2) Machliwali Baradari with shops below and opposite it. (3) Dubewali Haveli, (4) the residential house and grove of my grandfather in Tahsingunj covering a large area, (5) Imambagh comprising some lands, (6) lands in Muchlita in district of Sitapur and (7) lands in village Janora in district Faiyazabad. There are account books with my muktear about these properties. His name is Gajadharprasad. He looks after those properties. Most of the properties have been sold away. I do not keep any account as the income is very significant. My account is joint with that of my mother Umatun Fatema Bibi. She never tells me what is the income of the properties. She gives me some amount. She pays Rs. 30 or 35 per month for my pocket expenses besides food, lodging and clothing. I do not live with her in my ancestral house. I know one Mahajan of Lucknow named Lala Bholanath. He did not purchase all the properties of my father. He has purchased the shops of Mashliwali Baradari and that building also. So far as I remember, he has purchased no other property. There is no village named Gowhat, so far as I know. My father lived in a rented house at the time of his death, as he preferred to live there inside the town and not in my grandfather's houses in the outskirts of the city. He lived in that rented house from the time of my childhood. My father died when I was about 10 or 11 years old. I remember having lived with him in that rented house 3 or 4 years prior to his death. I was born in the residential house of my grandfather at Tehsingunj. My mother lives in a rented house with me since my birth. It is adjacent to the rented house in which my father lived before his death. My mother pays rent of the house where she and I live as she is its mistress—I occupy that house with her since July 1934. Before that I used to live with her in another rented house near-by. I used to pay its rent at Rs. 11 or 12 per month. It was a Pucca two-storied house containing two rooms on the 1st floor and two rooms on the ground with a hall. In that house myself, my son and my mother used to live. Since the death of Juhi Begum I am a widower. I occupied that house from 1930 or 1931 to July 1934. Before that I lived in another rented house near-by. So far as I remember, I lived there for a few months only. I used to pay rent for that house at Rs. 15 per month. Before that I used to live in the maternal uncle's house who was also my father-in-law and who was father of my first wife. My first wife died on 1st October 1914. His father who was my maternal uncle died at Lucknow in November 1926. The rent of the house I occupy at present is Rs. 15 per month. Its rent is being paid by my mother all along. I do not remember the name of the lady who is owner of that house. I have seen the rent receipts granted in my mother's name. My mother took the settlement of that house from its owner whom I call as my aunt as she is a cousin of my father. Muhommad Yusup was the owner of the house occupied by me just before my occupation of the present house. He sold that house to another person. That purchaser who wanted Khas possession obtained a decree for ejectment and for arrears of rent against me, 2 month's time to quit the house being allowed to me up to July 1934. That decree was not against my mother.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiffs Nos. 1 and 1(a).

No. 50. Syed Md. Hashim Ali Khan, witness No. 9.

The decretal amount including costs was Rs 63 or 64. I paid it up fully but I do not remember the date of payment. I have not got no title from the Govt. but I am recognised by Govt. As my father and grandfather were Nawabs I am called Nawab also. My memory is neither particularly strong nor particularly weak. I was educated in school up to primary classes. I left school in 1906, so far I remember. I have not read enough English so that I can read a letter printed or typed in English. I have read only 4 or 5 English books. I read the English affirmation form after I stepped into the witness-box, as it was read over to me by the orderly. I got an income of Rs. 200 or Rs. 250 per year from all other sources such as jagir etc. besides the monthly allowance of Rs. 30 or 35 given by my mother. I have got about 3 pies share in the jagir. I have got no papers with me now to show it. I can show any share from the papers of the collectorate of Lucknow. My aforesaid income of Rs. 200 or Rs. 250 is decreasing owing to remission of rent in the United Provinces. For the last 5 years I get a reduced income in some years and nothing in some years. Probably Gadhadhar Prasad paid some money in 1934. Whatever was received from him in 1934 was paid to my mother. Whatever amouut of income is sent regarding our jagir etc. is received by my mother. My brother died childless leaving a widow who died on 2nd or 3rd January 1924. My brother's name was mutatated in collectorate papers just like mine. None's name is mutated in his place after his death. I am not engaged in any business or trade now. Since the death of my bother I never attended the races. I do not remember whether my maternal uncle's house where I lived was sold before or after his death. There were 2 other decrees for Rs. 500 or 600 against me. The amounts of those decrees are being paid by me by instalments. I have paid up my debts on pro-notes. I executed a Kabinnama when I married Juhi Begum. So far as I remember, rupees 12 lakhs of rupees(*sic*) were fixed as her dower by that Kabinnama. I had no means to pay it but that was customary with Oudh family. When I was married to Juhi Begum her father was alive. After my marriage with Juhi Begum I lived in her father's house at No. 28 Circular Garden Reach Road. I am a Shia Muhomedan. Prince Kamar Kader was also a Shia Muhomedan. There are no sects among Shias. I heard of a sect of Musalmans named Mutazalla but I do not know their tenants. There was no ill-feeling between Juhi Begum and me. We were on very good terms. I knew that she was the daughter of a rich man and that her relations lived at premises No. 13 European Asylum Lane. I would not be surprised if she might have gone there because it was her sister's husband's house. But I never saw her going there. Golam Hossain's mother was related to my father. He lived with his family at a house in Amratola Lane in Calcutta. I never asked Juhi Begum to supply me with money. There was good feeling between Juhi Begum and her brother Saiyedali after the death of their father Kamal Kader. I do not remember when I left my father-in-law's house at Kidderpore for good. From 1928 when Amir Begum died I did not go to house No. 28 Circular Garden Reach Road. I cannot say what was the income of Juhi Begum, as I was not her Karindar or agent or her ammuktear. For 1 or 2 years after her marriage with me she had no full confidence in me

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and so she did not disclose her secrets to me or consult me but afterwards I gradually gained her confidence. I do not know when she had full confidence in me next says, she gained full confidence in me 1 or 2 years after her marriage with me. I used to pry into her affairs when I secured her cofidence in me. Sayedali after the death of his father never attempted to deprive the legal heirs of Prince Kamar Kader of their shares in his properties by right of inheritance. Juhi Begum and Amir Begum used to realise their shares of those properties themselves. It would have been more to my advantage to live with Juhi Begum after the death of her father than to go away to Lucknow. Because my mother was living at Lucknow I went there from Kidderpore. I have narrated all these things from my memory. I keep or kept no diary. I well remember that I was not present when Juhi Begum was examined on commission in the High Court suit. I and my advocates Zahur Asgur and Asgur Hossun Saheb look after my case jointly with Sabbir Hosain who is a Muktear. I have sold 6 anna share of my inheritance to Ashiq Hossain whose agent is Sabbir Hossain. My muktear Sabbir Hosain is looking after the case. He is paying the expenses of this litigation on my behalf. Previously I spent about Rs. 6,000 or Rs. 7,000 for this litigation but when I could not pay anything Ashique Hossain met the expenses. I have no papers to show that I spent Rs. 6,000 or Rs. 7,000. I do not remember who took the copy of Juhi Begum's deposition from the High Court. I cannot say why the first part of her deposition was not inserted in that copy. I was not present at the time of Juhi Begum's deposition. None was present then on my behalf. I did not enquire if anybody was present then on behalf of Juhi Begum. I did not see the copy of her deposition when I first came to know of it. After the death of Juhi Begum when I came to Calcutta in 1931 I became aware of the decree that followed her deposition on commission. I came to Calcutta when 40th day ceremony was not performed, regarding her death. There is nothing in writing to show and I have no witness to prove whether I came to Calcutta after her death either before or after the performance of 40th day ceremony. I did not learn from Juhi Begum that a decree had been passed against her. It is not true that I was on bad terms with her from the end of 1923. There was correspondence between me and Juhi Begum as well as her mother after 1923. I have not got those letters with me here. I can not produce them in Court without going to Lucknow. I can bring them within 3 or 4 days from to morrow if I go to Lucknow. I do not know any woman named Kajyol. Nasiban and Haidari Begum had nursed Chhangu Aga, son of Loudon Aga. It is absolutely false that I was driven out of the house of Juhi Begum's father by her on account of my intimacy with a woman named Kajyol. I do not remember if I took any copy of the decree obtained by Hashem Ibrahim Shaileji against Juhi Begum. I have said nothing about the decree. Witness says this in answer to the question about the decree obtained by Loudon Aga and Mahammad Toki against Juhi Begum. I came to know that Official Assignee representing the estate of Hashem Shaileji obtained a decree against Juhi Begum; then witness says, I ascertained that Hashem Shaileji obtained a decree against Juhi Begum.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiffs Nos. 1 and 1(a).

No. 50. Syed Md. Hashim Ali Khan, witness No. 9.

I do not know whether in execution of the decree her properties at Barabanki were sold. I had no talk with her about their sale. After I came to know of the decree in 1931 my advisers told me that it would not be necessary to take any steps to set it aside and that it would be seen when written statement would be filed in this suit. Prior to 26th March 1935 I filed no written statement in this suit. When a copy of the decree was filed by plaintiff No. 2 on 23rd March 1935 I filed my written statement on 26th March 1935. My recollection is that the copy of the decree was filed on 23rd March 1935 by plaintiff No. 2. I heard from my lawyer that it was filed on 23rd March 1935. I do not remember the name of that lawyer but he was present here on my behalf. I have got cash money on account of the sale of my 6 annas share from Mir Ashiq Hossain. I do not know if Ujir Ali was a muktear of Amir Begum. I know that Ujir Ali was Juhi Begum's Am-muktear. Munne Aga had no house at Saudila but his father-in-law has a house there. I do not know if he put up at his father in-law's house when he went there. Probably he did so. I had about a lakh of rupees in the hands of Mr. Hayem for which he had executed a bond bearing interest at 6 per cent per annum. I used to draw money from that account whenever I needed it. I paid Rs. 3,000 to Taki out of that money. The bond was not registered. In 1st week of July 1923 when I came to Calcutta I came to know from Juhi Begum that she had not executed any deed of assignment about her dower in favour of Hashem Ibrahim Shaileji. This took place at premises No. 28 Circular Garden Reach Road. None else was present then. I took no note of it in writing. She told me that after my departure from Calcutta a strange incident happened there that she had discovered that Mahammad Taki and Loudon Aga had committed a great fraud and that a commission had come from High Court for her examination as a witness and that she was examined on several days, that she was asked if she had sold her claim for dower for 12 lakhs of rupees to Hashem Ibrahim Shaileji for rupees one lakh against the heirs of her first husband and that she had released the dower and abandoned her claim and so it was not possible for her to have sold it and that she had actually not executed any sale deed nor received any consideration of one lakh of rupees and that no dower was due to her. She said that she also had found out in the course of that commission that Hashem Shaileji had brought a suit for 12 lakhs of rupees against the estate of her first husband and his heirs including her on the basis of that false deed although she had no information of it. She also said that she further discovered another fraud with regard to that to the effect that M. Toki and Loudon Aga had obtained from her a power of attorney after the death of her first husband and on its basis M. Toki had engaged an attorney on her behalf and prepared a collusive written statement on her behalf admitting the claim of Hashem Ibrahim Shaileji in the suit. This is the correct reproduction of the subject matter of the talk that took place between my wife Juhi Begum and me. On hearing the talk from her it struck me that I should protect her interest, but she told me that the suit had been dismissed. I was satisfied by her statement and so I made no enquiry whether

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the suit had been actually dismissed. I relied on her statement as true. She put it in such an intelligent way that I had no hesitation in accepting her statement and relying on it. She was neither very intelligent nor very dull but she was sensible as she appeared to me. From her statement I was convinced that fraud had been practised upon her. I made no enquiry to ascertain the truth or otherwise of the allegations made by him. But I left for Lucknow with her on 15th July 1923. I say it from my memory. I have nothing else to show it. After arrival at Lucknow I enquired of Loudon Aga and he admitted the truth of many of the statements made by Juhi Begum, from which I inferred that the whole of her statements was true. I made enquiries from Toki but he explained it away by laugh. He also admitted certain facts and concealed some facts from which I inferred that what was stated by the lady was true. As the case was disposed of I thought that I needed not do anything. I did not take any steps in the High Court to ascertain if the suit had been actually dismissed. I did not think it necessary because my wife as well as Prince Sultan Mirza told me that the suit had been dismissed. Sultan Mirza is dead. Both Juhi Begum and I were on very good terms with him. Formerly he used to live on Jannagar Road in Entally. When I began to reside at Khiderpore he out of love and affection for me he(*sic*) shifted his residence to Watgunj at Khiderpore. He was very senior to me in age.

N. B Banerji,

Offg. Sub-Judge

10-4-35.

Further cross-examined by plaintiff No. 2's pleader:—I know Hashem Ibrahim Shaileji personally from 1911. I do not know if Yusup Arif is related to him. I know him from 1902 or 1903. Sometimes I used to have correspondence with him. I used to write to him and in reply he used to send letters written by others and sometimes by him. I resided for some years in Rampur Estate. I do not remember if I had correspondence with Hashem Ibrahim Shaileji in that place. Seeing the letter dated the 10th November, 1929 witness denies that it is in his handwriting. Reading the letter wholly again says that it is not in his handwriting and that it was not written on his behalf. It is marked Z2 for the purpose of identification. Seeing the cover marked Z3 for identification witness denies that it is in his handwriting. The letters I received from Hashem Ibrahim Shaileji might be in my possession. I did not know that this property was for sale by Juhi Begum before the alleged sale in favour of Mahamuda Bibi. Seeing the signature in another letter dated the 5th February, 1930 marked Z4 for identification witness denies that it is his signature. Reading the whole of that letter witness says that it is not in his handwriting and that it was not written on his behalf. The witness admits the left hand portion (in English) of the writing on the cover to be in his handwriting. It is marked Ext. 22. I was at Rangpur up to September, 1930 so far as I remember. Witness admits the Urdu portion

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiffs Nos. 1 and 1(a).

No. 50. Syed Md. Hashim Ali Khan, witness No. 9.

of writings on the same cover to be his handwriting. It is marked Ext. 22A. Examining the cover witness says that it was registered. As the letter contained in it was considered by me as very important I sent it by registered post. Nobody sends an empty cover by registered post. It must contain some letter. My idea was that the letter might not be lost. So I sent it by registered post. I have got no letter copy book. Seeing the cover marked Z5 for identification witness says that it bears the monogram of Rampur State. I was not an employee of that state but I stayed at Rampur in the residence of a relation of mine. Seeing the same cover Z5 witness admits that the address written in English on it is in his handwriting. It is marked Ext. 22B. The address on another cover I think is in my handwriting. It is marked Ext. 22c. The witness admits the writings on another cover in both Urdu and English to be in his handwriting. It is marked Ext. 22d. I knew that Hashem Ibrahim Shaileji was a very rich man Hoozur Ala Begum was the daughter of my father's sister. She was at Rampur from before I went there. Nawab of Rampur State used to maintain her as he maintained me as one of his relations. Her husband was alive then. He died there. She did not assert any claim for husband's properties on account of her dower. Loudon Aga is the son of Juhi Begum's eldest sister called Mahsima. After the death of her first husband the latter married Nawabjan as her 2nd husband. She got a daughter by him. I cannot say if her daughter is alive. I do not think that she lives with Munna Aga at Sandila. Nawabjan was not an employee of Mah-sima Begum's first husband Muhammad Ali. I knew Nawabjan. He died 7 or 8 years ago. Mahsima Begum did not come to Calcutta immediately after the death of her first husband. She came to Calcutta in 1914 or 1915 and put up at house No. 2, Dent Mission Row. That house is at a distance of 2 or 3 minutes' walk from house No. 28, Circular Garden Reach Road. So far as I remember, Mahsima Begum's first husband did not die at house No 2, Dent Mission Road(*sic*). So far as I remember, her daughter by Nawabjan was born at Lucknow. Her daughter is now 22 or 23 years old. Nawabjan used to live with Mahsima Begum during her stay at Khiderpore but she died shortly after she came from Lucknow. After her death I saw Nawabjan sometimes at Lucknow and sometimes at Khiderpore. When I saw him at Khiderpore he lived at house No. 2, Dent Mission Road and also at house No. 28, Circular Garden Reach Road where Amir Begum and Juhi Begum lived. I can produce the letters received from Hashem Ibrahim Shaileji if I get leave for 8 or 10 days to bring them from Lucknow where they are.

Cross-examination for defendants Nos. 3 & 4.

Cross-examined by pleader for defendants Nos. 3 *and* 4:—Loudon Aga is now sitting in this Court-room by the side of Hashem Ibrahim Shaileji. I am not on friendly terms with him. He is my relation. At first he was on good terms with me but since 1923 we are at odds with each other. In 1923 he was staying at house No. 28, Circular Garden Reach Road. I saw him there up to 1923 April when I was there. But after that time I was not there. So I cannot say where he stayed afterwards. I do not know where he is staying from 1923 uptill now. Sometimes he is in Lucknow and sometimes

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he is in Calcutta. The cause of ill-feeling between him and me is that I came to know in 1923 of all the incidents I have mentioned. We exchanged compliments. He is younger than me and I have to respond to his compliments. I cannot say if I would examine him as a witness on my behalf in this case. I have cited only one witness He is brother of Hashem Ibrahim Shaileji. I have seen Muhammad Toki every day in Court compound from the commencement of trial of this suit. I have seen Ujir Ali sitting in Court-room every day. I have seen also Hashem Ibrahim Shaileji talking with him and M. Toki in this Court compound. Ujir Ali is attending this Court even after his examination is over. I have not seen Munna Aga in Court since the commencement of trial of this suit. I have never seen Loudon Aga or Munna Aga drink. I do not remember where I was residing in May and June 1931. I had been to Nanital on many occasions. I do not remember if I went there in 1931. Possibly I went there in 1931. I do not remember how long I stayed there then. I do not remember if I received any notice of this suit after the death of Juhi Begum. I came to know of the suit when I got a notice from the Court. I got that notice 2 or 3 months after the death of Juhi Begum. I was at Nanital at the time of her death. I go there on account of my ill-health for a change of air. As it was very hot in Lucknow and as I suffered from indigestion I went to Nanital before the death of Juhi Begum. I stayed there for about $1\frac{1}{4}$ months or more. So far as I remember I went to Nanital before the death of Juhi Begum. I had no information of her death in Calcutta when I was in Lucknow till after 5 or 6 days after its occurrence. I got it by a telegram. I do not remember who sent that telegram. I cannot say if that telegram is in my Calcutta residence or in Lucknow. I may try and I hope that I may produce that telegram within 10 or 12 days. So far as I remember, a telegram did go to me. It went to Lucknow. Somebody sent it to me in an envelope in(?) my address. It came to my mind that I would be substituted in this case in place of my wife Juhi Begum. In answer to the question in English 'Do you know English(?)' witness says that he does not know English. I have read 3 or 4 books written in English. I cannot write letters in English. If anybody gives me the spelling of English words I may write them. I was depending upon the Court regarding substitution of my name in place of my wife Juhi Begum. I do not remember if I wrote any letter to any pleader to get myself substituted in this suit. I was overcome with grief on receipt of death news of my wife. So I do not remember if I wrote any such letter to any pleader. It did not strike me that I should come immediately to Calcutta as she must have been buried and her brother was there to attend her funeral ceremony. I do not remember how long after the date of her death I went to Calcutta. I cannot say if it was 5 or 6 months after her death that I went to Calcutta. I do not remember the exact date as people may remember certain dates and may not remember certain other dates. I have said from my memory the particular of dates I have given of my coming to and going from Calcutta. I have got nothing in writing about them. Probably the dates I have given are not incorrect. When I came to Calcutta after the death of Juhi Begum I put up at Aminiya Hotel near the big mosque and stayed

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiffs Nos. 1 and 1(a).

No. 50. Syed Md. Hashim Ali Khan, witness No. 9.

there for 3 or 4 days. As I do not remember the date of my arival in Calcutta how can I remember the date of my departure for Lucknow? I came with Mr. Zahoor Ahamad advocate on that occasion. I came to Calcutta sometime after that time. I do not remember that date. I put up at Aminiya Hotel on that occasion also and stayed there for 4 or 3 days. I do not remember the date of my departure on that occasion also. Zahoor Ahamad also accompanied me then also. The witness volunteers you put me questions regarding dates and I will tell you and you may consult the register and find them correct. For the third time I came to Calcutta it was on 27th November 1933 and I put up at Continental Hotel and stayed there for 2 days. I do not remember the date of my departure on that occasion. The date of my coming to Calcutta on the 4th occasion was 8th March 1935. So far as I remember, I did not come to Calcutta during the period from 27th November 1933 to 8th March 1935. I returned to Lucknow on 5th March 1935. Mr. Zahoor Ahmad also accompanied me on that occasion. I next came to Calcutta on 18th March 1935 and put up in flat 'G' in the Hotel at No. 216-2, Lower Circular Road. I am staying there still. From November 1933 to March 1935 I left the case in charge of Babu Amulya Krishna Mitra pleader. I do not remember the particulars of any Tadbir made on my behalf in this suit during that period. But I may say particulars of Tadbir made on my behalf if I am asked about them on a particular date. I did not get any cash money from Mr. Shabbir Hosain to meet the expenses of this litigation. I have got cash money in terms of the conveyance but I do not remember how much. Some money was received by my creditors and some money I received in cash. Some thousand rupees I might have received and some 7000 rupees were received by my creditors. This is not the whole consideration mentioned in the conveyance. The balance is left with the purchaser to spend. One Maharaj Bahadur *alias* Puwti(*sic*) was a creditor. I cannot say how much his dues were. It is written in the document. He advanced money to me on several pro notes. I do not remember the amounts entered in them or the dates of such pro-notes. These pro-notes cover the period from 1932 to 1934. I borrowed money on these pro-notes for meeting the cost of this litigation and not the cost of maintenance of my family. It may be that some money was spent by me for my own expenses. I have spent about Rs. 7000 in paying the fees of Mr. Asger Hosain advocate and Mr. Zahoor Ahamad advocate and Babu Amulya Krishna Mitra pleader and in meeting the cost of my travelling. The pro-notes also carry interest. Mr. Asgar Hosain came twice once on 27th November 1933 and again on 18th March 1935. I do not know what is the principal money or interest covered by each pro-note.

(At this stage on the prayer of plaintiff No. 14a and defendants Nos. 3 and 4 further cross-examination will be resumed to-morrow).

N. B. Banerji,
Offg. Sub-Judge,
11-4-35.

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Further cross-examined :—It may be that I appeared in this suit in the first week of October 1934. The case in which I was involved after the death of my father was finished in July or August 1916. I am the elder of the two brothers. Our Russel Street house was sold in 1915 but I do not remember the date. My share in the Muchliwali Baradari house was sold in 1912 or 1913, so far as I remember. I do not remember the date. I was then major. My mother mortgaged it while I was a minor. My share in Tasimgunj residential house and grove was sold in September or October 1917 or 1918 after the Privy Council decree. We lost that Privy Council Case. My share in Debewali Haveli was sold shortly before or after September 1917. I do not remember the date. My share in Imambag was also sold at about the same time. My share in Muchreta in Sitapur District was not sold as it was not mortgaged, so far as I remember. I do not know small quantity of land comprised in it as I had never been there. I do not know the name of the cultivator who holds that land. I do not remember it also. That property yields an annual income of Rs. 150 or 200 in my, my brother's and my mother's shares. We have to pay revenue to the Government for it but I remember the amount. My share in jagir was sold in September 1917 along with other properties covered by mortgage. The property at Janora has not been sold. It yields an annual income of Rs. 15 or 16. I had money in 1918 when I came to Calcutta. I had about a lakh of rupees with Mr Hyam. The latter became an insolvent. Out of the principal sum I got only Rs. 20000 or Rs. 25,000 only. Besides I used to draw interest. I do not remember exactly when I received the last payment. It may be in 1920 or 1921. It was before he became an insolvent in 1922. My brother and mother were also sharers in the aforesaid lakh of rupees. So far as I remember, myself and my brother were sharers of Rs. 20,000 or Rs. 25,000 because my mother received her share of the money at the time of registration of the document. The document to which I refer is a conveyance for 3 lakhs 40 thousands of rupees in which my mother had $\frac{1}{3}$ share. I do not remember the date of that conveyance. I received Rs. 20,000 or 25000 by several instalments. Interest was received at 6 p. c. p. a. I used to get Rs. 420 per month more or less as interest. I got interest up to 1920 or 1921. I remember that I got interest before Mr. Ham(?) became an insolvent. I had account books about the interest received by me. They were left in the house of Amir Begum. My bank book, my account book, my accounts with Mr. Ham and the bond executed by latter and Mr. Jones were left in her house. I kept them in that house because it was my father-in-law's place where I used to keep everything of mine. It is not true that I left those articles there because I had to leave that house suddenly. I left them there in 1926. I wanted them from my wife Juhi Begum but she told me that her brother had taken them away. So far as I remember, she told me this in 1926. I did not write to Saiyedali demanding those articles but I told him about them in 1926. He denied his knowledge of them and referred me to manager Muhommad Jafar who is sitting in this room and to Ibney Imam. I asked them for those papers twice or once from each of them. They said that they had searched for them but could not find them out. I have at

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiffs Nos. 1 and 1(a).

No. 50. Syed Md. Hashim Ali Khan, witness No. 9.

present no papers to show that Rs. 84,000 was with Messrs. Ham and Jones. I got Rs. 3000 from Mr. Ham to pay to M. Toki. I had no account with any bank in Calcutta. Mr. Ham had account with Alliance Bank, Simla. I had no dealings with Mr. Jones. I did not pay other creditors because their dues are small and I should pay them. I am paying Rs. 13 a month to one creditor and another creditor sometimes Rs. 50, sometimes Rs. 100, sometimes Rs. 150. So far as I remember I have no other creditors than those two at Lucknow. I do not remember if I have creditors at Khidirpore. I know Abdul Gani. I do not remember if he has got a decree against me or if I borrowed any money from him. It may be. I know Babulal of Khidirpore and his son-in-law Ahmed Ali. I did not borrow money from the latter. He advanced money to Amir Begum and Juhi Begum and I put my signature on their pronote. They did not sign it, so far as I remember. He advanced money not less than Rs. 500 and not more than Rs. 1000. I did not repay it. It was understood that it would be set off against the rent payable by him to Amir Begum and Juhi Begum for house No. 36 Mominpore Road. This was the private understanding. There was nothing in writing about it. I was referring to the house on Mominpur Road where there was a school belonging to the estate. I am not sure of the number of the house or the name of the road on which it stood. What benefit would I derive by enquiring if that loan was paid up or not. I thought that the money would be paid up in the way I have said. I had not to pay any money on the occasion of my first marriage. It is natural that every man wants to secure benefit. If I married my cousin who was the daughter of a rich man I did not do anything unusual or wrong, in the hope of securing benefit. Therefore I was desirous of my marriage with Juhi Begum. (The Court work is suspended at 12-30 P.M. as it is a Friday, according to Government circular).

N. B. Banerji.

Offg. Sub-Judge,

12-4-35.

Further cross-examined:—M. Toki used to appropriate a part of the money of the loan which Amir Begum took from other persons. He used to get Rs. 50 per month from Amir Begum as his pay. What he used to take from the amounts of her loans was his additional income. He used to take commission from the fees of her pleaders, advocates and counsels engaged on her behalf by him. From my marriage I used to stay at premises No. 28 Circular Garden Reach Road. When I came there I found Toki Saheb in great confidence of Amir Begum and exercising great influence over her. When I was married I found a litigation already started for a child set up by Sehera Khatun. I do not remember the number of that suit. It may be 223/1917. At the time of that limitation(*sic*) Toki was rendering help to Syed-ali also. I do not remember if he appointed pleaders for him but he joined the consultations about the case on his behalf. After my marriage when I came to house No. 28

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Circular Garden Reach Road I used to live in that house with Amir Begum, Loudon Aga, his wife and child and Toki Sahib, Juhi Begum and maid-servants and servants. Munnee Aga was residing at premises No. 2 Dent Mission Road. All the expenses were borne by Amir Begum through M. Toki. Juhi Begum was not in need of my money at that time. Amir Begum was drawing a pension of Rs. 200 per month. She was also receiving wasika(?) money and pension from Lucknow on account of her property inherited from her father. Juhi Begum was not in a position to pay Rs. 3750 on any day of 1920. Where would she get so much money? She was not in a position to pay Rs. 4000 on 21st November 1923 or on any day of that year, and Rs. 3200 on 8th November 1926 or any day of that year, so far as I know. I never heard from Juhi Begum that she borrowed any money from Hashem Ibrahim Shaileji and that she was repaying it from time to time. She was not in a position to pay Rs. 3050 on 5th September 1929 or on any day of that year. So far as I could see, M. Toki was very generous in attempting to secure loans for the ladies and for carrying on litigations. He was doing that for his benefit. He disappeared from house No. 28 Circular Garden Reach Road in 1922. With his disappearance perhaps only one suit continued It was a suit for dower brought by Amir Begum. I do not know if Amir Begum withdrew that suit as I was not here. Syedali was agreeable to my marriage with Juhi Begum. Prince Kamar Kader did not attend that marriage. He was then at premises No. 11, Rangolal Street which was called Jamuntala Koti, and was formerly known as 11, Qurbari Lane. That house was separated from house No. 123, Circular Garden Reach Road by 1 or 2 houses. I also stayed at the latter house on many occasions at a stretch of 2 or 3 months at a time. When the Prince died I was not here. When I came here a curator had been appointed at the instance of Syedali. I heard that the Prince died of Pneumonia. A long time after his death Syedali leased out his properties to Sundermall for 60 years. I do not exactly remember if he granted that lease after obtaining permission from the District Judge. Amir Begum and Juhi Begum filed objections to it of their own accord. Muhammed Toki and myself used to look after that case on behalf of the ladies. I learnt when I came that there was a Revisional case in the High Court. Amir Begum and Juhi Begum took proceedings in the High Court but I was not present then. But when the matter came to the District Judge on remand they filed their objections. I do not remember if the members of the public filed objections before the District Judge. The properties were valued by two Engineers—by one when the matter was before the High Court and by the other when the case came to District Judge on remand. I was not present on the first occasion but I was present on the second occasion. The Engineer valued the properties at 37 lakhs a little more or less when the matter was before the District Judge. I think that the Engineer assessed their income at more than Rs. 4,000 or Rs. 5,000 a month. The District Judge valued the properties at over 20 lakhs and cancelled the lease. He further held that this lease was not beneficial to the Wakf. Amir Begum and Juhi Begum engaged the

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services of Mr. Jorab Counsel and Babu Satis Chandra Ghose on their behalf. The expenses were met by Amir Begum. From the time of my marriage in 1918 upto 1923 I put up at house No. 28, Circular Garden Reach Road but I used to frequent Lucknow during that period. I went to Lucknow to fetch my mother on 8th or 10th January, 1919 in order to bring my wife Juhi Begum to that place from Calcutta. Prince Kamar Kader did not object to send Juhi Begum to Lucknow. At that time the Prince was not ill at all. On reaching Lucknow I had to return to Calcutta shortly after on receipt of the news of Prince's death. I do not know if Jafar Shiraji was appointed manager of Syedali in September, 1923 as I was not here then. I did not see the manager when I came to Calcutta for 1 or 2 days in the early part of January, 1924, as I had to return to Lucknow on receipt of the report of death of my younger brother's wife. I have seen the Manager from February, 1926. He was not appointed in my presence but I saw him in service. I saw him living at premises No. 11, Rangolal Street. I was called to attend a ceremony at that house but I cannot say if he had a wife. Possibly he had a wife then. It was in 1926. I am neither very friendly nor unfriendly with him. He looks after the case of my adverse party in these suits. I had no grievance against him save and except that when under the instructions of my brother-in-law Syedali I asked him to return my papers, relating to Mr. Ham but he did not return them to me, although those papers were of no value to me then. So far as I remember, I was not on writing terms with him. Seeing the envelope witness says that it appears to be in his handwriting. It is marked Ext. I. Seeing the letter dated 16th August, 1928 witness says that it appears to be in his handwriting and to bear his signature. It is marked Ext. J. There was a riot between Hindus and Mohammedans in April, 1926 in Calcutta. So far as I remember, I lived at house No. 28C, Garden Reach Road from January 1926 to May 1926. At that time there was no quarrel between me and Juhi Begum. It is false that there was such a bitter quarrel between her and me at house No. 28, Circular Garden Reach Road that I had to take shelter at 3 A M at the house of Prince Sultan Mirza at Watgunj in 1926. I used to go to his house occasionally and stay with him for a fortnight or a month when I came to Calcutta. But in 1926 I did not stay with him. I left house No. 28, Circular Garden Reach Road on 23rd or 24th May, 1926. I went directly to Howrah Station when I left it. Juhi Begum did not accompany me then. There is no special reason for it. Seeing a letter Ext. J. dated 16th August, 1928 witness says that it does not disclose any quarrel between him and his wife Juhi Begum and that there was some difference between him and his wife as usual between husband and wife and she was of irritable temperament. I did not go to Lucknow on that occasion on account of her hot temper. I started from the premises No. 28, Circular Garden Reach Road about one hour of the starting time of Bombay or Punjab Mail in the evening. It is not true that I struck Juhi Begum and so the latter and Amir Begum sent for a Durwan and that I therefore left their house. It is not true that they sent for the Manager to report the matter to the Thana and that he out of his affection for me did not do so. It

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is true that Juhi Begum did not come to me from 1926 to 1928. In 1927-1928 I frequented Rampur. I do not remember whether I received any reply to my letter Ext. J from the Manager. I was on writing terms with Juhi Begum from 1926 till her death. I got letters from her in reply to mine. Those letters are at Lucknow I can produce them within 8 or 10 days. Juhi Begum did not know to write letters but she used to keep females who wrote her letters. I cannot give any idea about the number of letters received from her. I cannot say if their number is 2, 4, 5, 10 or 50. Nanni Begum and another were the writers of such letters. I do not remember if he accepted the five conditions laid down in my letter Ext. J. It is not true that she did not go to me from 1926 up to the date of her death because she did not comply with such conditions. She went to me in 1930 and 1931. She came to my house at Lucknow in 1930 and lived there for about two months—April and May 1930 but I was then at Rampur and could not come to her as His Highness the Nawab of Rampur was attacked with Paralysis and as out of respect for him I could not leave him and as he used to hold me in great esteem. So I did not meet Juhi Begum in 1930. My mother and Juhi Begum informed me by letters of latter's arrival at our house at Lucknow. I can produce such letters within 8 or 10 days if called for. My mother's sister died on 22nd or 23rd December 1930. Her fortieth day ceremony was performed on 29th or 31st day from the date of her death. Juhi Begum did not attend that ceremony. She went there some two weeks after that ceremony, in the first week of February 1931. I sent report of my aunt's death to her at premises No. 11 Rangolal Street by a letter within 3 days from her death. I do not remember from whom I learnt that Juhi Begum was residing at house No. 11 Rangolal Street in December 1930 but I knew it as a matter of fact. From 1926 to December 1930 all my letters were addressed to Juhi Begum either at house No. 28 Circular Garden Reach Road or at house No. 123 Circular Garden Reach Road or at house No. 11 Rangolal Street. On the death of Amir Begum Juhi Begum shifted her residence to house No 123 Circular Garden Reach Road. I was not present then. I heard that Amir Begum died there. At premises No. 11 Rangolal Street I never lived with Juhi Begum. I did not got any reply to my letter informing Juhi Begum of the death of my aunt. I heard that she would be coming. I do not remember from whom I heard of it. That was the meeting I had with her since I left Calcutta in 1926. Munnee Aga took her to my house in 1931. She left Lucknow after staying there for 4 or 5 days because from her face it appeared that she was displeased with me on account of my not complying with her desire to go along with her immediately for the conduct of this suit. She came to me at Lucknow for condolence as well as for bringing me to Calcutta to look after her suit—what papers can I have to show that Juhi Begum went to me at Lucknow in February 1931 (?) I do not remember if she wrote me any letter after returning from Lucknow. I have cited no witness to prove it as I did not consider it necessary. I do not know if Juhi Begum came to Calcutta in March 1931. I do not know if her pension was stopped for February and

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March 1931 as she did not mention it to me. I learnt on coming that she was examined by Shoem Sha Mirza None was present when she spoke to me about the institution of this suit. I do not remember if I read the written statement of Syedali filed in this suit. I know that Syedali pleaded in his written statement that the plaint in this suit was not filed by Juhi Begum and was a forgery and that an issue has been framed on that point. I have not brought the letters of Juhi Begum because they have no bearing on that issue. I have nothing in writing from her to show that she instituted the suit. Ahamad Aga my cousin accompanied her to Calcutta in February 1931. I have not cited him as a witness as it is not necessary. He is alive and is at Lucknow. I don't know the signature of Syedali. I came to see the case as it was the case of my mother's cousin and my mother-in-law. I was not looking after it us her muktear or Tadbirkar, Juhi Begum was also a defendant in the suit. Her muktear or agent and vakil and also I used to look after the case. So far as I remember, Amir Begum claimed 12½ lakhs of rupees as her dower. I do not know if there was a Kabinnama regarding her dower. I do not remember if Amir Begum filed any Kabinnama in her dower suit. I do not remember to have seen her Kabinnama. Amir Begum demanded her dower before the date of Wakfnama and not three days after that date. These incidents did not happen in my presence. The plaint of Amir Begum was shewn to Mr. Pugh and Mr. N. Sarkar after it was drawn up by a pleader. I do not know what is written in that plaint. So far as I know, the suit was for recovery of dower. I do not know if there was any other prayer in the plaint. I do not remember if I read that plaint or the written statement filed Juhi Begum. At the time when I was married or about 15 or 20 days after that I did not know if Kamar Kader executed a Wakfnama. After my marriage I heard of its execution by him একঠো কাগজ লিখা হ্যায় (a document was written) but I cannot say from whom I heard of it. I never read it. I know Haji Hafij Alabux. Amir Begum executed a mortgage in his favour. I was an attesting witness to the deed I heard the deed when it was read over. But the document was in English. I do not know English. I do not remember whether I was present when it was explained to Amir Begum. I do not remember the property No. 55/1/1 Diamond Harbour Road. I do not remember all the number of properties of Prince Kamar Kader Mirza. I do not remember if the property No. 55/1/1 Diamond Harbour Road has been acquired by Calcutta Improvement Trust or Calcutta Corporation or any Company. I do not know whether a plot of land at Garden Reach at Matiaburz was acquired or not by Port Commissioners. I do not remember premises No. 4 Koila Sarak Road and No. 36 Mominpur Road both stood in the name of Amir Begum. The premises No. 2 Dent Mission Road might have stood in her name but it belonged to Prince Kamar Kader. I have no information as to what happened regarding that premises as I was then at Lucknow. I only know that house No. 36 Mominpur Road belongs to the estate of Kamar Kader and Mr. Ilias has built shops and houses at No. 4 Kaila Sarak Road but I have no information as to what changes took

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in respect of these properties. I do not know at all what changes took place regarding premises No. 36 Mominpur Road. I only remember premises Nos. 123 and 28 Circular Garden Reach Road and 11 Rangalal Street, and 1 and 2 Dent Mission Road, 60 Ballygunj Circular Road, 4 Koila Sarak Road and another near that Road whose number I do not remember. I do not remember the descriptions and numbers of other properties. I do not remember how many buildings Prince Kamar Kader had left. One of them is No. 28 Circular Garden Reach Road. I do not remember if there was a tenant on that premises in 1931. I do not know if there was any tenant on premises No 122 Circular Garden Reach Road in 1931. So far as I remember, I have no knowledge if the properties mentioned in the plaint Schedule were occupied by tenants or not in 1931. I was not present in Calcutta in 1931 when the plaint of Suit No. 2 was filed in Court. I heard from Juhi Begum that she was at premises No 11 Rangolal Street in 1931. I did not see with my eyes if she was in possession of any property in 1931. Syed Ahammad Kabuli was the Tasildar of Amir Begum and Juhi Begum. They had another Kabuli Tasildar who had a fight with Saheba Khatun's men with lathis. They had other Tasildars such as Mahammad Habul and Abdul Gani. Syed Ahammad came in 1919 after the death of Prince Kamar Kader. The witness volunteers. Amir Begum and Juhi Begum had taken possession of almost of the properties after the death of the Prince Syed Ahmad was in service for 4 or 5 years. I never accompanied him at the time of Tasil as he used to bring the amounts of collection and pay them to the ladies. I do not know for what properties they used to realise rents. The tenants came, the sweets were distributed to them: some Kabuliats were taken from them and receipts were granted to them. All these happened at premises No. 28, Circular Garden Reach Road. I do not remember the names of the tenants but there are several Registered Pattas. I do not remember the dates of such Pattas. They were written at different times. I do not remember the two or three dates on which sweets were distributed to the tenants. Perhaps I may take certified copies of those Pattas and file them here. I will enquire from my officer if application for taking their copies was made. His name is Sabbir Hasan. He is the constituted attorney of plaintiff No. 1a of Suit No. 2. I have instructed him to take copies. He said that he would do so. I instructed him to make inspection in the registration office and afterwards take copies. About 10 or 12 days ago I gave him such instructions. As he was too busy with other matters he could not make time to inspect the register and take copies. The counter-foils of dakhilas granted to tenants were with Amir Begum and Juhi Begum. I do not remember where they are now. I have got papers to show realisation of rents by them in respect of Wakf properties. I will file them whenever necessary. I do not remember what papers I have. They are in Calcutta and Lucknow. I will not disclose the nature of those papers. Some of them are registered. There are original papers as well as certified copies. Regarding the grove at Lucknow Esanulla realises rents from the time of Kamar Kader. He pays me my share of profits. I do not remember how much. It may be about Rs. 20 or 22 a year. I do not know

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if he has executed a Kabuliat in favour of Syedali. He paid the full amount of rents to Amir Begum and Juhi Begum up-to 1924 and 1925. He pays Rs. 130 as rent annually besides paying the Government revenue of Rs. 42. He paid me rents in 1932-1934. I granted him receipts. I have nothing to show that, I do not keep counterparts of receipts. I have no accounts to show it also. I do not remember when I realised rents from Esanulla in 1932 but it was in June. I think that he paid me Rs. 21 or Rs. 22. I cannot give the date of realising rent from him in 1933 but it was in June or July 1933. I do not remember how much he paid There was remission of rent to some extent under Government order. In 1934 June or July he again paid rent to me amounting to about Rs 20. I was not like a servant during my stay at Rampur. I stayed there as a quest of Nawab of Rampur. A stipend was fixed for me by him in 1929 at the monthly rate of Rs 225 besides free conveyance and board. I received salary up to September and October 1930 from him. When I came back in October 1930 I did not return there. No work was specially assigned by him to me. His idea was to support me. He died on 20th June, 1930. I have not got any record to show the period of my stay at Rampur but it can be ascertained from the records of Rampur Estate.

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16-4-35.

Further cross-examined:—The other Kabuli worked for 3 or 4 years. Habeli worked for 5 or 6 years. I cannot say for how many years Abdul Gani worked. He worked for a shorter period. Syed Ahamad was appointed in my time. I do not remember if he was appointed in 1919 or 1920. There were others working before him. He came after them. I do not remember the names of others who worked before him. The other Kabuli was Shah Saheb who worked with Syed Ahamad. He died at that time. Habil was also appointed in my time, so far as I remember. He also worked with others. I do not remember who came first and who came last of them. I do not know when Abdul Gani joined the service When I left house No. 28, Circular Garden Reach Road on 15th July, 1925 he was in service with Syed Ahmad and Habil. I do not remember Syed Ahmad's pay. Perhaps they were getting Rs. 10 or 12 or more per month. Amir Begum had a salary book. It was written by Muhammad Toki and Loudon Aga. The kitchen expenses were written at the dictation of Muhammad Toki. I did not see what expenses were being incurred on account of establishment of Amir Begum. I did not think it necessary or desirable. Amir Begum used to take loans. I did not see her sell her jewelleries to raise money. If she did so I don't know it. Prince Kamar Kader used to get Rs 4,000 a month or Rs. 4,500 as his pension. His income from his Jagirs may be Rs 500 or Rs. 600 a year. He had G. P. Notes but I do not know their value; next says, I do not exactly

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remember. It was less than two lakhs of rupees. He might have been drawing interest on these notes but I did not see him do so. He had immovable properties from which he must have been getting income. His immovable properties may be more than what is mentioned in the plaint schedule. There were also his movables. Some of them were seen by me. After his death a case was instituted by Syedali against Saheba Khatun in the Criminal Court relating to his movable properties. In that case I used to accompany him (Syedali) to Court. Whenever he used to call me I went to him. I did not pay the fees of the pleaders engaged for Syedali in that case on his behalf. Kayem Hosain and Kisori Babu were the Tahsildars of Prince Kamer Kader during his life-time. Jnan Babu was latter's Manager when I was a boy. He continued to be so till the advent of Saheba Khatun, who was a clever woman and who removed him. After Prince's death Jnan Babu again became the Manager. After him I did not see any Manager till January 1926 when I saw Aga Muhammad Jafar Shiraji. I cannot say if the latter was acting as Manager at that time. I subsequently came to know that he was the Manager. I did not know Achhan Saheb. There were(?) a Durwan named Gayadin who was in the service of Saheba Khatun and not of Prince Kamer Kader. The latter had his Durwan at premises No. 123, Circular Garden Reach Road. As long as the Prince was alive the properties were his and he was in possession thereof. Saheba Khatun was not in possession of the properties covered by her leases during the lifetime of Kamar Kader. I have said that Abdul Gani was her tasilder. I do not remember, next says—I do not know if she had any properties except those covered by the leases. I was not present when after the death of Kamar Kader Syedali granted lease to Rai Saheb Sundermull. The Mis. case regarding the lease went on in the District Court till 4th or 5th April 1923 when final order was passed in it. From July 1923 when I left house No. 28 C. G. R Road till February 1926 I did not come to that house excepting two days in January 1924. On those two days in January 1924 both I and Juhi Begum came there together. It is not a fact that Juhi Begum came there alone. It is absolutely false that Juni Begum complained about my taking away her ornaments from her at Lucknow and that for this reason she came alone to Calcutta unaccompanied by me. In answer to the question 'after the cancellation of Sunder Mull's lease, Syedali as Mutwalli took possession of all the properties?' Witness says that he did not see him take possession and that he saw the tasilders of Amir Begum and Juhi Begum collect rents in January 1926 when he came to Calcutta and so he thought that they were collecting rents from 1923 and that from 1923 the ladies were continuing in possession. When I came to Calcutta in January 1926 I saw Habil and Kabulis collecting rents. I saw them coming but I did not see them collecting. I cannot say from which tenants rents were collected on behalf of those ladies in January 1926. I do not know if in 1924 there was reconciliation between Amir Begum and Syedali and if Amir Begum withdrew from her dower suit. I was not present then. It is not a fact that Amir Begum and Juhi Begum were drawing allowance

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from Syedali as mutwalli of the Wakf estate. I have seen the seal of Amir Begum but I cannot identify it. I cannot see properly and so I cannot say if the seal marks on the plaint of suit No. 158/1920 shewn to me is her seal marks and I cannot compare them with those in Ext. E series. I do not know the signature of Ujir Ali. I never saw it. I do not remember who paid the municipal taxes from the time Prince Mirza Syedali granted lease to Sundermull till the cancellation of that lease. I do not know who paid such taxes from the time of concellation of the lease upto present time for the properties in suit. I do not remember who paid the taxes for the properties in suit from the death of Prince Kamar Kader till 1924. Possibly Juhi Begum and Amir Begum might have paid them. I do not know what is the amount of tax for each of the premises in suit. I have not applied for mutation of my name in Calcutta Corporation rigister as yet. I do not remember if Juhi Begum applied for mutation of her name in that register. I do not know Loudon Bibi who was alleged to be Mutai wife of Prince Kamar Kader. I know Meher Khatun and Saheba Khatun, who were sisters Meher Khatun was mistress of Kamar Kader before advent of Saheba Khatun. I saw her in his keeping since 1902. It may be that she came to him before that time. I knew Prince Darajah. He was a consanguine brother of Prince Kamar Kader. He is dead. I do not remember how many wives he had. Prince Sultan Mirza was another consanguine brother of Prince Kamar Kader. I do not remember how many wives he had. Next says, he had two wives who predeceased him. I do not know if he remarried afterwards. Syedali gave evidence in T. S. No. 223/1917. I noticed that there was a suit between Prince Kamar Kader and Mr. Moris. I do not remember if I was present at any of the marriages of the sons or grandsons of King of Oudh Wajed Ali Shah except the marriage of my sister's daughter with Achhe Mirza son of Prince Kamar Kader, which I attended on behalf of both the parties. Seeing Ext. J witness says that he does not remember now what he meant by using the word 'দাওয়াই' (Dawai Medicine) in that letter and that he cannot understand the meaning of the expression 'যিসকো কে মায়ে তুল আলফাজ নহি লিখ শকতেহেঁ'। (All the words whereof I cannot write) Juhi Begum did not take cocaine in my presence. I did not mean 'cocaine' by the word 'দাওয়াই' (Dawai) used in that letter. I do not remember what that 'দাওয়াই' (Dawai) was. It may mean pepperment or 'তাম্বুল বাহার' (Tambul Bahar) which I wanted her to stop within 2 or 4 or 6 months *i. e.*, to give up altogether. Khatija Bibi is the wife, and Mahmuda Bibi is the daughter, of Hashem Ibrahim Shaileji. Golam Hosain is the husband of Mahmuda Bibi but I have never seen him. Khatijan Bibi and Mahmuda Bibi are the Benamdars of Hashem Ibrahim Shaileji in respect of these two suits. I, Mr. Jahur Ahamad, Mr. Asgar Hosain, went together to premises No 10 Mission Road and their places in Khiderpore to search for a house yesterday because we were thinking of leaving our present residence. I did not see Loudon Aga with us then. In answer to the questions suggested by witness' counsel to the cross-examining pleader for defendants Nos. 3 and 4 witness says that Juhi Begum was younger than me by 9 years. My present age is 49 years. Juhi Begum had no servant of the name of

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Sidiakha. She had only two maid servants named Tumni and Elai Khanam. I got my name mutated in respect of Lucknow grove after the institution of the Suit No. 2. I have no papers with me to show that the names of Amir Begum, Juhi Begum and Syedali were recorded in respect of that property.

N. B. Banerji,
Offg. Sub-Judge,
17-4-35.

Syed Md. Hashim Ali Khan.

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No. 51.

Nos. 180-209—*Deposition of Haji Kasem I. Shalejee, witness No.* 10 *for plaintiffs Nos.* 1 *and* 1(*a*), *dated the* 17*th April*, 1935 *etc.*

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiffs Nos. 1 and 1(a).

No. 51. Haji Kasem I. Shalejee, witness No. 10.

Examination.

Title Suits Nos. 1 and 2 of 1934.

Deposition of witness No. 10 for the plaintiffs 1 and 1(a) taken on solemn affirmation on the 17th day of April, 1935, before Babu Nikunjo Behary Banerji, 3rd Additional Sub-Judge of Alipore.

My name is Haji Kasem I. Shalejee son of late Ibrahim Suleman Shalejee, by caste———. My age is 49 years. I reside at 24K, Russa Road South, Pargana———, District 24-Parganas. My occupation is nothing.

I know Khatija Bibi. She is wife of my brother Hashem Shalejee. Mahmuda Bibi is my niece eldest daughter of Hashem Shalejee. The latter has three daughters. Mahmuda Bibi is about 25 years old. My father was Haji Ibrahim Suleman Shalejee. He died leaving 4 sons and 4 daughters and 3 widows, two sons having predeceased him leaving children. His 4 sons are Ismile, Hashem, Kasem and Ahamad. His two predeceased sons were Suleman, and Muhammad. The four daughters are Hawa wife of Ismile, Khatijan who is dead, Ayesha, Rosul Bibi. My father died on the 7th September, 1907. He had a firm consisting of himself and his sons. Latterly he retired from the firm and left it to his sons. He had retired from the firm in 1906. It was named Ibrahim Suleman Shalejee & Co. My share in the firm was 1½ annas. Ismile's share was 7½ annas. Hashem's share was 5½ annas. Ahmad's share was 1½ annas. My sisters or the children of my deceased brothers or the widows of my father had no share in the firm. Our shares in the firm were according to the capital advanced by us and also according to our seniority. The brothers and sisters had other properties. I had a market known as Haji Kasimbazar at Kalighat as my personal property apart from what I inherited from my father. It does not belonged to me now. It has been taken possession of by official assignee since I became an insolvent. I became an insolvent along with my brothers and the firm on the 8th December, 1921. I used to live in No. 2, Amratola Lane in 1921. My father lived and died there. It is a three-storied building. My parents my wife and I only lived together there. I am the only son of my mother. Hashem Shalejee is my consanguine brother. He is now seated in this room. He has been sitting here since my evidence began. Hashem lives at house No. 8a, Amratola Lane since the death of his father. Mahmuda Bibi also lives with him there. So long as her husband takes her with him she remains out. She is not here (in Calcutta) since 1930. She is in Rangoon. From 1930 up

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

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No. 51. Haji Kasem I. Shalejee, witness No. 10.

to present time she has been in Rangoon with her husband Golam Hosain Ahamad Orajee. Mahmuda Bibi or her husband has no property in Calcutta or outside it. Khatija Bibi lives with her husband Hashem at house No. 8a, Amratola Lane since the latter came to live there. Her father is Muhammed Yusuf Kharawa. Khatija's parents are alive. Her father has only one property. Its monthly income is Rs. 200 to Rs. 250. He does not(*sic*) other business. Khatija's father has 3 sons and 3 daughters. His sons are Yusuf, Yaqub and Achhu. They do no business. Hashem had no separate property of his own except his share in the firm and shares in two properties. He shared one of those two properties with his brothers Ismile and Ahmad. This property is at Rangoon. It yields a monthly income of about Rs. 1,000. Hashem had $\frac{1}{3}$ share in it. The 2nd property is also at Rangoon. Hashem shared it with the father of Golam Hosain Orajee equally. It yielded a monthly income of Rs. 600 or Rs. 700. This state of things existed in 1918. My father had created a Wakf in his life-time. It consisted of premises Nos. 112 to 126, Lower Chitpur Road It is a two storied barrack with shops below and residential quarters above. This was for a public charity and not for the maintenance of his family. There were five trustees of this Wakf *viz.* four surviving sons of Haji Ibrahim Shalejee and Mahmuji Musaji of Rangoon. Out of them my brother Ismile was driven out on account of misappropriation of the Wakf property. It was in 1924. Now the High Court has appointed Mr. Azizul Huq Barrister as receiver since August, 1933. My brother Ismile was the Secretary of this Wakf till he was turned out in 1924. Since then my brother Ahmad became the Secretary. The monthly income of this Wakf estate is Rs. 1,200 to Rs. 1,500. My brother Hashem was never its Secretary. There was no Wakf created by the new firm of Ibrahim Suleman Shaleji & Co. There was a Wakf created by the old firm of my father, which was styled Ibrahim Suleman & Company without the word Shalejee and which was located at Lower Chitpur Road. The property of that Wakf Estate comprised premises Nos. 106 to 108, Lower Chitpur Road and 24, Park Lane. It was also a public trust and not for the descendants of my father. Its monthly income was about Rs. 700 or 800. Its trustees were my brothers Ibrahim and Hashem and myself, 4 others such as Ahamad Musaji, Muhammed Musaji and Suleman and Mahmuji Musaji. They were relations of my father. Ismile was its first Secretary up to 1924. After 1924 my brother Hashem was made its Secretary. He continued to be so for about a year 1925 only. After 1925 Suleman Musaji Shalejee became the Secretary. The house No. 1, Amratola Lane was the office of the firm of Ibrahim Suleman Shaleji & Co. There is a Kancha tiled hut on 8/1, Amratala Lane. It is constructed by a butcher over land belonging to a Hindu Bengali. Its condition has continued from my childhood up to present time. No member of our family has ever resided in it. Mahmuda Bibi never resided there. It is not fit for occupation by a gentleman or a lady. The Amratola Lane runs between premises 8A on that lane and Lower Chitpur Road There are two passages leading to Lower Chitpur Road one being our private passage and the other belonging to Calcutta Corporation. There is an iron gate at the end of our private passage on the Lower Chitpur Road. Over the gate there is a room which is

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used as a kitchen by my brother Hashem. Premises 8A, 8B, 2 and 2A, Amratola Lane are Wakf property including ⅓ share of Basti land of Howrah Tandel Bagan and 51, Elliot Road. This Wakf property is amalgamated with the aforesaid first Wakf property known as Ibrahim Suleman Shalejee Wakf. These properties were also in the possession of Mr. Huq the receiver appointed by the High Court. So far as I know, Hashem has not paid a single pice as rent to the receiver for the premises No 8A, Amratola Lane in which he still lives inspite of the order of the High Court for payment of its rent by all its occupiers. My brother Ismile occupies premises No 8B, Amratola Lane which is on the north of the private passage. Premises No. 8A, Amratola Lane is on the south of that passage, facing the premises No. 8B. To the south of the iron gate aforesaid on the Lower Chitpur Road are shops numbered 121 to 129. Then comes a big gate south of premises No. 129 leading to a dwelling house which is No. 130, Lower Chitpur Road and which is a two-storied building. Premises Nos. 131 to 134 are shops facing Lower Chitpur Road. The shops are on the ground-floor. On the first-floor there are residential quarters which appertain to premises No. 130. Premises Nos. 127—132 belonged to the heirs of my deceased brother Soleman Ibrahim Shaleji. There was a partition suit among them, in which a receiver was appointed, who sold them at the end of 1932. Before 1932 the premises were in the possession of Musa Soleman Shaleji the eldest son of my deceased brother Soleman. Many small tenants occupy the residential quarters in premises No 130 on the first and ground floors. The rents of such rooms varied from Rs. 18 to Rs 250. One block of such rooms was let out at Rs. 250. The remaining rooms constitute single room quarters without kitchen, or privy and fit for occupation by bachelors only. A double room was let out for Rs. 40. Other rooms were let out at Rs. 18 to Rs. 30. Some rooms were used as motor garages and godowns on the ground floor. Premises No. 132 Lower Chitpur Road is a shop and is fit for a shop and not for residential purpose.

N. B. Banerji,

Offg. Sub-Judge.

17-4-35.

Further examined:—I had lent 5 lakhs of rupees to the firm of Ibrahim Soleman Shaleji and Co. in 1920. I have recovered nothing from the firm on account of that loan owing to its insolvency. To cover the loss the firm took the loan. It had been sustaining loss since the year 1917, due to speculation in rice, sugar and gunny bags. The speculation was made without my knowledge, or consultation. The rice speculation was made in Rangoon by Hashem Shaleji. The sugar and gunny bag speculation was made by Ismile Shaleji. These speculations were made contrary to the terms of our firm. I did not advance any money to Hashem Shaleji. No other partner of the firm did so. I have heard of the name of Juhi Begum and M. Toki. I know the latter since 1918. Prior to 1918 I saw him frequenting the office

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of Ibrahim Soleman Shaleji Company at No. 1 Amratala Lane. He used to come there occasionally to Hashem Shaleji my brother. I do not know from which time he began to come. I live at premises No. 2 Amratala Lane since August 1933. Hashem Shaleji spoke to me regarding Juhi Begum that negotiations regarding transaction in respect of her dower was going on, that he would get it for a small amount and that M. Toki was coming to him for that purpose. This talk took place at about the middle of 1918. Hashem wanted me to join in that transaction. I told him that he would make me acquainted with the full history of the matter and then I would think over the matter. I had no other talk with him on that day. After about two months *i.e.* in August 1918 I had again a talk with Hashem and he told me that he had already paid Rs. 10,000 to M. Toki for payment to Juhi Begum and that there would be an agreement soon for a lakh of rupees. He told me that a sum of Rupees twelve lakhs as dower would be payable to Juhi Begum from the estate of her deceased first husband Humayun Kader and that there would be an agreement for payment of one lakh of rupees between Juhi Begum and Hashem Shaleji. The latter also said that he had already paid Rs. 10,000 and that he would pay Rs. 5,000 to Rs. 7,000 more on that account and that he would not have to pay the balance out of one lakh. He also asked me again to join but I again told him that I would consider the matter and give a final reply later on. After this I met Mr. Toki at the office of the firm at premises No. 1 Amratala Lane, where Hashem Shaleji was not present. I enquired of M. Toki about the matter. He explained all about Juhi Begum on the subject matter of my enquiry. Toki told me that Humayun Kader had left a very big estate, that Juhi Begum's dower was twelve lakhs, that he was going to have this transaction done for Hashem Shaleji for a small amount. He told me that he had got Rs. 10,000 and if another Rs. 5,000 to Rs. 10,000 were spent the transaction would be completed. I enquired of M. Toki how the transaction about 12 lakhs of rupees could be completed for Rs. 10,000 to Rs. 20,000 as the lady might give up her claim for dower as is generally done. He said that as he was the manager of Juhi Begum's mother and the holder of power of attorney from Juhi Begum he could have the transaction done and the decree passed without the knowledge of Juhi Begum. Regarding my query as to what had happened regarding ten thousand rupees he had received he replied that he took some portion and paid Loudon Aga some portion and Juhi Begum some portion and a portion would go to the pleader. Then he advised me to join Hashem Shaleji in the transaction and not to be anxious about the result. I told M. Toki that I would not join the transaction. I told the same also to Hashem Shaleji when I met him after 2 or 3 days. My brother Hashem wanted me to join the transaction in order to get some money from me, as he was short of funds. All the account books of the firm and personal account books of its partners are now with the Official Assignee.

Cross-examination for added plaintiff No. 2.

Cross-examined by pleader for added plaintiff No. 2 in suit No. 2:—I have applied for my final discharge in last month of March. An order has already been passed on my application for my discharge. I do not re-

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member its date. I have not yet received a copy of that order. I have not seen the discharge order myself. I am asked to serve notice, upon the creditors by the Official Assignee, who promised to supply me with the discharge certificate. I do not know why he asked me to serve notices upon the creditors. I was declared insolvent on 8th December 1921. Before I was adjudged an insolvent Mr. B C. Dutt Solicitor of Messrs. J. C. Dutt became a receiver of the entire estate including the estate of the firm as well as the personal estate of its partners, but I did not make over possession of my estate to him. Messrs. David Sasoon & Co. and other creditors have applied for declaring the firm as insolvent as their dues were not paid by the firm. Mr. B. C. Dutt was not appointed receiver of my personal estate. I do not remember the number of the suit brought by the creditor. I filed the suit in which Mr. B. C. Dutt was appointed receiver. I brought the suit against my brothers Ismile, Hashem and Ahamad who did not pay me inspite of the award. It was in 1920 or in the beginning of 1921. All the partners of the firm including myself filed Schedule of their private estate. I shewed some properties belonging to my mother as forming part of her Wakf estate and some properties belonging to my wife as that was a fact. Mr. Gaulstaun was my creditor as I borrowed money on equitable mortgage of my letters of administration from him to lend it to the firm. My wife opposed delivery of possession of certain properties demanded by Official Assignee. The latter brought 2 suits against my two wives in 1925 and 1926. In those suits my brother Hashem and 4 or 5 other persons deposed against my wives. The suit against my first wife was decreed in 1926 and that against my second wife was dismissed in 1927. I am not on bad terms with my brother Hashem Shaleji up till now. I did not allege bad terms between him and me in my personal Schedule filed (in) insolvency case. I and he jointly signed the Schedule filed in that case on behalf of the firm. Witness admits to have written the statement in his personal Schedule in the insolvency proceeding that Ismile Ibrahim Shaleji and Hashem Ibrahim Shaleji stood guaranters for the payment to the creditors Ibrahim Ahammad Akuji and four others as they were not in good terms with him. I filed the Schedule on 14th September 1922. I alleged them not in good terms with me then as they demanded money bequeathed by my mother to her deceased sister's children from me immediately after the death of my mother even before the 40th day ceremony on her account was over. It is not a fact that I am not on speaking terms with my brother Hashem since 1922. I am attending Court for 4 days since I received summons in the District Judge's Court premises. I came to Court in connection with my Title Appeal No. 548 of 1934 on that day. I was made co-defdt. with my wife in that suit. I have no property of my own. I reside in my wife's house at Tollygunge. My first wife died on 7th December 1934 leaving no property or children. I went to Mecca on 22nd February 1934 for the second time with my sister. I got not a pice from the heirs of Usuf Musaji Shaleji, deceased in cash for that pilgrimage. The widow of the latter who is my cousin sister accompanied me then to Mecca. She is daughter of my mother's sister. I was first married with Fatma Ahammad Dubby in 1898 during my boyhood.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

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Hashem's first marriage was also celebrated then. Mahmuda Bibi was born in 1901 or 1902. Hashem mortgaged a disputed property No. 4 Kailasarak Road to M. Ilias. He invited me as one of the public and in my personal capacity on the occasion of marriages of his two daughters Sakina and Hanifa Bibi. I attended those marriages in my both capacity at premises No. 8/A Amratala Lane. Sakina was married in about 1928. Hanifa was married in 1928 or 1930. One of them was married in the month of Rajab The other was probably married in the month of Id. I do not remember if Messrs. Mackinon Mackenzie & Co. were one of the creditors of the firm. That Company had dealings with our firm. They had dues against our firm. I looked after the business of our firm all along. I took part in its dealings with that Company. The transactions were on cash or by cheques. Two Schedules were prepared for the firm one by Ismile and the other by Hashem. They were sent to me for approval with a request that I might join them. On comparing the Schedules I joined Hashem in the Schedule prepared by him—witness identifies Mahammad Ilias present in the Court-room. On the east of premises No. 8/A Amratala Lane is a row of shops facing Lower Chitpore Road, their numbers being 121—126. On the west of that premises is premises No 7 Amratala Lane which appertains to Wakf property and on the west of which is premises No. 6 Amratala Lane. To the west of the latter is house No. 5 to the west of which is house No. 4 and so on west of premises No. 8/B Amratala Lane are premises No. 120 Lower Chitpore Road and 8/1 Amratala Lane. I did not see the latter house in March last. I saw it in February last when I went to the shop of Hakim Ismile Benarasi which is on the ground-floor of the former house. I went to that shop through a lane called Amratala Lane leading to Lower Chitpore Road. I do not know if Mahmuda Bibi purchased the dues of Messrs. Mackinon Mackenzie & Co. from the firm or if she obtained dividend from the Official Assignee regarding the firm assets. Sakina Bibi daughter of Hashem Shaleji died in January 1933 in which month my son was born. She lived with her husband at premises No. 2A Amratala Lane. Mahmuda was in Rangoon with her husband. Hanifa with her another sister lived with their father Hashem at premises No. 8A Amratala Lane. They still live there. Golam Hossain Orazee is son of my step-sister and is husband of Mahmuda Bibi. He is on good terms with me. He does not correspond with me from Rangoon. He left for Rangoon with his wife for the last time in the middle of 1930. I do not remember the month. I have no note-book. Witness points out his chest as his note-book. I keep no memorandum. I have no business. I am not in service God gives me bread and supports me. I got my dress from my business. I received Re. 1 with summons which I returned saying that I would receive what Court would give me. On the 4th day I attended Court to give my evidence as wanted by the summons served on me. I have not brought the summons. I kept myself informed of the dates of the hearing of these suits and filed my Haziras in Court all along. I have 2 sons and 7 daughters alive. I lost 5 children. My wife supports my children. I forgot to bring my summons. I returned Re. 1 to Sabbir Ahammad who

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had paid it to me at the time of service of summons. He is not here now. I came to know him through Ashu Babu pleader who attends Court from Entally. I was introduced to him only 10 days ago. The telegram bears the postal seal mark 12th September 1933. It is addressed to Hashem Ibrahim Shaleji by Golam Hossain Orazee. I first went to Mecca about 26 years ago, with my wife and my mother. My mother met the expenses of that pilgrimage. My sister met the expenses of our 2nd pilgrimage to Mecca. She is widow of Yusuf Musaji Shaleji. It is not true that Hashem took any lease for a brick field at Kotrong in Hooghly district from Calcutta Corporation for 10 years in the names of his four daughters. I do not know who deposited the money in the Corporation for getting that lease and who got back that money after the expiry of the lease. Golam Hossain's father has a business at Rangoon. He and Abdulla Parek with two others look after it. His brother Golam Mahammad has returned here recently 4 months ago. I do not remember the date. I cannot say without reference to my book the date of birth of my first daughter by my second wife. I have got 7 daughters and 2 sons who are living, by my second wife. I married the latter at Rangoon where her father lived. Golam Hossain's father went on pilgrimage to Mecca in 1930 and returned from it in 1931. Golam Hossain did not accompany him. His younger brother Yusuf accompanied him. Premises No. 130 Lower Circular(?) Road contains a number of shops. It is separate from premises No. 132 on that road. The building is numbered 130 but its shops on the ground-floor on the road side are numbered 131 and 132 separately. Premises Nos. 127 to 129 are separate buildings There is no latrine attached to the shops in such premises. When I saw premises No. 8/1 Amratala Lane it comprised Kutcha and Pucca tin-sheds, It is absolutely false that it is a three-storied building It stands on the land of one Teli Babu. I saw its existence for about 20 years. I do not know when it was constructed. It is absolutely false that the premises No. 8/1 Amratala Lane appertains to our Wakf estate. It is not on the west of premises No. 8A Amratala Lane. I cannot say who were the tenants of premises Nos. 127–132 Lower Chitpore Road and how much rents are payable by them when I was first introduced to Sabbir Ahammad by Ashu Babu pleader. Sabbir told me that Hashem Ali had come. I had no other talk with him on that day but he sent to me Hashem Ali Khan. The latter told me that that case was going on about which I knew from before. The witness volunteers that he could not find me at Amratala Lane when he went there. I did not ask him when he went there. He said that I had been saved by not entering into the transaction and that I would have to give evidence in these suits. Hashem Ali Khan knew that I did not become a party to the transaction about dower and the agreement between him and Juhi Begum in that connection and that I refused to join that transaction. From 1916 or 1917 I came to know Hashemali Khan through Hashem Ibrahim Shaleji. At that time he used to come to meet the latter in the office at No. 1 Amratala Lane. There is a firm of solicitors named Das and Basu at No. 12 Old Post Office Street. I do not know if money was due to that firm

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from Ahamad Ibrahim Shaleji. Next says, no money was to it from the latter. I cannot say the names of all the creditors of Ahamad Ibrahim Shaleji but I can name only 3 or 4 of them *viz.* Howa Bibi his sister, Saidan Bibi his mother in law, Fatma Bibi his mother and Hanifa Bibi his wife. I do not remember the names of all my creditors or their number. I cannot say the particulars of their dues as I have not learnt them by heart. I do not remember what was the total amount of my debt. I cannot say it even by guess. I cannot say if it is 10 or 12 or 20 lakhs of rupees. It may be that I have got a faulty memory.

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N. B. Banerji,

Offg. Sub-Judge.

18-4-35.

Further examined :—When M. Toki had conversations with me regarding the negotiations for the purchase of Juhi Begum's claim for dower by Hashem Shaleji none else was present there. It was on last day or week of August or in the first week of September 1918. I did not ask Hashem about this. Hashem asked me about it. None else was present then. I was no partner 20 in respect of any of the properties with Hashem Shaleji. The latter used to sit in his office-room alone. I had a personal account. My clerk used to write it. There were different clerks of mine at different times. Jay Chand Babu was my last clerk. He wrote my personal account up to 1921 or 1922. Hashem Shaleji had no property. So he kept no personal account. During my father's lifetime I had no property except what I inherited from my mother. The latter died on 21st June 1919. My father died on 7th September 1907. The property of my mother was under my control during her lifetime. She did not convey it to me by any written document. She made a verbal gift of it to me. I made a Haji Kasem market at Kalighat 30 in 1908 on the land of my mother. I was then a Haji. On the death of my mother I inherited (1) one land with a two-storied building in Musalmanpara Lane, (2) premises No. 51 Dhurrumtola Street, (3) premises No. 4 Kanai Seal Street, (4) premises Nos. 7 and 7A Sagar Dutta Lane, (5) premises 124/A, B and C Russa Road South, (6) premises No 127 Harrison Road, (7) Premises No. 13 Giri Babu's Lane. I had no cosharer in respect of these properties. I inherited them as my mother's sole heir according to Muhamedan Law. I made over all these properties except premises Nos. 7 and 7A Sagor Dutta's Lane and also two properties acquired by Calcutta Improvement Trust *viz.* No. 127 Harrison Road and No. 13 Giri Babu's 40 Lane, to the Official Assignee when I became an insolvent. I received the compensation money from the Calcutta Improvement Trust for the acquired properties in 1920 after obtaining letter of administration. I was declared an insolvent on 8th December 1921. My wife meets my fooding and lodging expenses at present. I look after her estate. I purchased 5 bighas of land from Nepal Bhattacharya in 1901. I have given that land to my wife as her dower without any deed in 1901 or 1902 just after my purchase. The

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building on it was constructed at her cost by me. The construction work was begun in 1911. It is not yet finished. It has cost Rs. 60000 or thereabout. The account papers regarding it have been destroyed. The private books of 1919-1922 are with the Official Assignee. It is absolutely false that I did the construction work with the money received by me from the Improvement Trust for the acquired properties. My wife got Rs. 60000 from her father, her dower and at the time of her marriage. I do not remember the accounts showing the amount she paid to me when I began the construction work. I do not remember the month in which the work commenced. The aforesaid properties belong to my 2nd wife whom I married at Rangoon. The criminal case is instituted by Calcutta Corporation against me in respect of the cow-shed created on premises No. 24G Russa Road South now called as 37A Sadanand Road. It is absolutely false that I brought the doors and windows of premises No. 2 Amratala Lane when I left it. The receiver of the wakf estate verbally moved the High Court alleging that I misappropriated those doors and windows but it was found to be false.

On plaintiffs 1 and 1a's petition the witness is recalled for further examination :—

This is nondh book of Ibrahim Soleman Shaleji Company for the year 1918. It is a transfer entry book of our firm of four brothers commencing from 1st January 1918 and ending on 31st December 1918. The entries contained in it were written by three persons, Golap Bhai Desai, Kissendas and his brother Naratum. This book was filed in the office of Official Assignee. I know the handwriting of those persons who were servants of our firm and whose duty was to write the book. Seeing another book produced by Official Assignee witness says that it is the cash book for 1918 relating to the firm of four brothers and it contains entries written by aforesaid three persons. This cash book contains an entry dated 30th September 1918 on the debit side relating to a sum of Rs. 1,12,069-10-6-p. spent for purchase of gunny bags for consignment outside Calcutta. The first of the items which make up this total is Rs. 19,800 paid as per contract of Hosain Birchandra Company No. 759 for 150 bales of gunny bags Nos. 60000 at Rs. 33 per cent for bills Nos. 1658 and 1659 of Khurda Company through Radha Kishen in notes as follows: (1) Rs. 10,000 in one currency note $\frac{OB/25}{39021}$ No. ———, (2) Rs. 9000 in nine notes of Rs. 1000 each, (3) Rs. 800 in eight notes of Rs. 100 each. There are no numbers mentioned in respect of Rs. 1000 and Rs. 100 notes. This entry is written by Kishendas Babu. It is marked Ext. V. There is another entry in page 67 of this book showing on the debit side a payment of Rs. 516-6 on 7th May 1918 to Hashem Shaleli with the following details *viz.* that sum of Rs. 500 was paid to Muhamad Toki and sum of Rs. 16-6 was paid for his motor car accessories. This entry is written by Kishendas Babu. It is marked Va. Each partner in our firm used to order payments by slips. The cashier of the firm used to

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pay the person mentioned in such slips. This entry therefore shows that Hashem Shaleji gave a slip to M. Toki to receive payment of Rs. 500 from the cashier of the firm on his account and the cashier paid the amount to M. Toki. This is what is meant by this and other entries of the cash-book. Seeing the entry dated the 9th July, 1918 in the cash book of 1918 at page 101 witness says that it relates to Rs 325 being debited in Hashem Shalejee's account for payment to M. Toki for receiver matter. This entry is also written by Kishendas. It is marked Ext. Vb. Seeing the entry dated the 29th July, 1918 at page 108 of the cash book witness says that it relates to a debit of Rs. 1,050 against Hashem Shalejee for payment of Rs 850 to M. Toki on account and Rs. 200 to the latter on that day This entry is written by Kishendas Babu. It is marked Ext. Vc. The sum of Rs. 850 had been paid to M. Toki on account previously. That account was adjusted on the 29th July, 1918 by an additional payment of Rs. 200 to him on that day. The entry does not show on what account the money was paid to M. Toki. It was paid by cashier of the firm on slips issued by Hashem Shalejee. Seeing the entry dated the 15th August, 1918 at page 118 of the cash book witness says that it shows a debit of Rs. 10,000 against Hashem Shalejee's account for payment to M. Toki with the following details *viz.* (1) Rs. 6,000 in six notes of Rs. 1,000 each, (2) Rs. 1,000 in two notes of Rs. 500 each and (3) Rs. 3,000 in small notes. It is written by Kishendas. It is marked Ext. Vd. This payment was made by the Cashier of the firm on slip issued by Hashem Shalejee to M. Toki according to practice. Seeing the entry dated the 19th September, 1918 at page 136 of the cash book witness says that it shows a debit of Rs. 3,000 against Hashem Shalejee for payment made to Das and Basu by a cheque on Central Bank of India for purchase of stamp. The entry is written by Golapbhai Desai. It is marked Ext. Ve. Seeing the credit entry dated the 22nd March, 1918 at page 42 of the cash book witness says that it shows a credit of Rs. 13,000 in the account of Hashem Shalejee as deposited by him. There is nothing in it to show the details about the amount or the source of its receipt. This entry is written by Narattam Babu. It is marked Ext. Vf. Seeing the credit entry dated the 28th March, 1918 at page 44 of the cash book witness says that it shows a similar credit of Rs. 3,000 in the account of Hashem Shalejee in three notes of Rs. 1,000 each. There are details in the entry about the source of its receipt. This entry is written by Kishendas or his brother Narattam. It is marked Ext. Vg. Kishendas and his brother were both accountants of our firm. Seeing the credit entries dated the 8th August, 1918 in the cash book witness says that there is no entry made on the credit side of Hashem Shalejee's account on 8th August, 1918 and there is no debit entry against the name of Khatija Bibi or Mariyum Bibi. Seeing the entries dated the 8th August, 1918 in the Nondh book witness says that there is an entry dated 8th August, 1918 about debit of Rs. 45,032-10-3p. against Khatija Bibi mother of Mahmuda Bibi and of Rs. 19,000 against Mariyum Bibi daughter of late Mosaji Ahamad Shalejee paid as a loan to Hashem Shalejee and that the total of these sums was credited to the account of Hashem Ibrahim Shalejee. There is nothing in this entry to show why or on what account these sums were debited to the

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ladies or why they were credited to Hashem Shalejee This entry is written by Golapbhai Desai It is marked Ext. V1. The Pucca ledger book of 1918 of the firm is written by Golapbhai Desai who was its head accountant. Seeing the entry at page 33 of that book relating to the account of Hashem Ibrahim Shalejee witness says that there is a balance of Rs. 72,718 5-3p to his credit at the beginning of 1918 brought forward from the previous year. As the condition of our firm was bad the condition of all its partners was bad also. The cash book of the firm for 1919 is written by Musabhai Rahmatulla and Kishendas. Seeing the page 11 of that book witness says that there is an entry dated the 27th January, 1919 showing credit of Rs. 3,000 in the account of Hashem Ibrahim Shalejee received in cash with no details. It is marked Ext. Vh. There is nothing in it to show the source of its receipt. Seeing page 28 of the cash book witness says that there is an entry dated 23rd February 1919 showing a credit of Rs. 15,000 in the account of Hashem Shaleji received in small notes. Both the entries are written by Mushabhai Rahamatulla an accountant of our firm. I know his handwriting. The entry is marked Ext. Vi. There is nothing in it to show where he got the money from. Seeing page 35 of the cash book the witness says that there is an entry dated 3rd March 1919 showing credit of Rs. 5,000 in the account of Hashem Shaleji received from Juhi Begum by 5 notes of Rs. 1,000 each. This entry is written by Mushabhai Rahamatulla. It is marked Ext Vj Seeing page 147 of the cash book of 1919 witness says that there is a debit entry of Rs. 3,180 against Hashem Shaleji with details as follows *viz.* (1) Rs. 30 paid to Calcutta Club as fees (2) Rs. 3,000 paid to one gentleman and (3) Rs. 150 as cash expense for self. This entry is written by Mushabhai Rahamatulla. It is marked Ext. Vk. This cash book was cash book of our firm deposited in the office of the Official Assignee. (The witness gives the above answers to the questions put to him by the examining counsel for plaintiffs 1 and 1(a) regarding some entries in the cash-book of 1919 after consultation with the Pleader Babu Satis Chandra Ghose for defendants Nos. 3 and 4 during the time the Court rose for tiffin. But both Satis Babu and the counsel for plaintiffs 1 and 1(a) inform the Court that the consultation they had related to other matters and not to the questions put to the witness—N. Banerji).

Cross-examination for defendants Nos. 3 & 4.

Cross-examined by pleader for defendants Nos. 3 and 4:—Ahamad Ibrahim Shaleji is my youngest step-brother. He lived at premises No. 120 Lower Chitpur Road. He married in Khiderpore. I do not know the address of his father-in-law—Ismile Ahamad Hafeji is not known to me. He is not related to me.

Cross-examination for plaintiff No. 2.

Cross-examined by pleader for plaintiff No. 2:—The cash books and ledger and Nondh books referred to by me were kept by the firm in regular course of its business. Golapbhai is dead. Kishendas does his own business at Ezra Street in Calcutta. His brother Naratan is in the firm of Golam Hosain's father at Rangoon. I cannot say the present whereabouts of Musabhai Rahamatulla. These books of our firm were not written at my dictation.

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They were written by the accountants in discharge of their respective duties. The cashier and they used to sit in the same room. The entries in the Pucca cash books were written by the accountants with reference to those in the Kancha cash books. There were only one ledger book and one nondh book. It is absolutely false that I sat with Esmile in the same room. My duty was to keep correspondence, to check the Kancha cash book with reference to the slips, to open telegrams, to receive and note orders, to give instructions to brokers, to purchase goods and to send telegrams after shipment. Only Esmile one of my brothers was a partner of my father's old firm named Ibrahim Soleman Company. There was another new firm of my father named Ibrahim Soleman Shaleji and Company in which my father had no share but I and my three brothers had shares After dissolution of the old firm this new firm was started. Seeing Ext. Vd in the cash book of 1918 at page 118 witness says that in that entry dated 15th August 1918 the words 'হস্তে তকি' are written meaning 'to Taki'. There are several entries in the ledger book containing such words. Seeing the entry dated 27th September 1918 at page 140 of cash book of 1918 witness says that the entry shows that sum of Rs 80000 is debited against Hashem Ibrahim Shaleji who took the money himself for payment towards the purchase of dower of Juhi Begum from her for one lakh of rupees as detailed below *viz.* (1) Rs. 10,000 in one note No $\frac{OB}{25}$——39021, and (2) Rs 70,000 in seventy notes of Rs. 1000 each. The entry is written by Golapbhai. It is marked Ext. 23. I used to check the entires in the Kancha cash book with reference to slips when I was in Calcutta and I was not ill. Seeing the page 99 of cash book of 1918 witness says that the entry dated 6th July 1901 shows a debit of Rs. 40,000 against Hashem Shaleji as paid to him in 40 G. C. Notes of Rs. 1000 each but contains no details. This entry is written by Kishendas. It is marked Ext. 23A. Seeing the entry dated 13th July 1918 in cash book of 1918 at page 101 witness says that it shows a debit of Rs 10,000 against Hashem Shaleji on account of withdrawal by a chit issued by him to the cashier of the firm in ten notes of Rs. 1000 each. This entry is written by Kishendas or his brother. It is marked Ext. 23B. Seeing entry dated 5th September 1918 in the cash book of 1918 at page 130 witness says that it shows a debit of Rs. 20,000 against Hashem Shaleji as paid to Messrs. Das & Basu solicitors as earnest money in twenty notes of Rs. 1000 each. This entry is written by Kishendas. It is marked Ext. 23c. Seeing entry dated 28th September 1918 in cash book of 1918 at page 141 witness says that it shows credit of Rs 35,000 to the account of Hashem Shaleji as realised from Juhi Begum on account of different debts repaid by her to him as detailed below *viz.* (1) Rs. 10,000 in one note No. $\frac{OB}{25}$——39021 and (2) Rs. 25,000 in 25 notes of Rs. 1000 each. This entry is written by Golapbhai Desai. It is marked Ext. 23D. Seeing page 33 in the ledger book of 1919 witness says that it contains entry showing Rs. 1,49,030-14 annas as the balance to the credit of

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Hashem Shaleji brought forward in the account-book of 1919. This entry is written by Golapbhai Desai. It is marked Ext. 24. Seeing page 36 in ledger book of 1918 witness says that it shows credit of Rs. 54,515-14 annas to the account of Khatija Bibi mother of Mahmuda Bibi up to 9th December 1918 and withdrawal of Rs. 48,282-10-3p. by her leaving the balance of Rs. 6,233-3-9p. This account is written by Golapbhai Desai. It is marked Ext. 24A. Seeing page 39 of the ledger book of 1918 witness says that the account shows credit of Rs. 48,346-1-9p. as the balance in the name of Morium Bibi mother-in-law of Hashem Shaleji and withdrawal of Rs. 46,450-3-1p. on three different occasions by her leaving a balance of Rs. 1,895-14-6p. This account is written by Golapbhai Desai. It is marked Ext. 24B. It contains reference to page 179 of Nandh book dated 8th August 1918. It shows three items of withdrawal *viz.* (1) Rs. 19,000 as per Nandh book of 1918 page 179 dated 8th August 1918, (2) Rs. 4,000 as per cash book page 167 dated 13th November 1918 and (3) Rs. 23,450-3-1p. on account of Akyab house as per cash book page 305 dated 31st December 1918. A tenant of Musafirkhana of the Wakf estate of Ibrahim Soleman Company sued against me to recover his dues according to direction of 2nd Judge of Calcutta S. C. Court as I received the amount from him on behalf of the estate. That tenant is Hakim Majidul Huq. He obtained a consent decree against me. My prayer for 18 months' instalments was granted. The decretal amount exceeds Rs. 100. It is not yet paid by me. I do not know if any warrant was issued against me for its recovery. There was no question of misappropriation of the money by me. The order made by the C. S. C. Court is against all the trustees of the Wakf estate as one of them is not entitled to take money from a tenant of the estate according to the Wakf scheme. Witness volunteers: Hashem Shaleji has stll got that money but he has not yet handed over that amount. Hashem Shaleji is present in Court and is instructing plaintiff No. 2's pleader. The silver watch and gold chain belong to me. I got it at the time of my 3rd marriage.

N. B. Banerji,
Offg. 3rd Addl. Sub-Judge.
23-4-35.

Haji Kassam Salehji.

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No. 52.

No. 210—Deposition of Kanai Lal Mitra, witness No. 11 for plaintiffs Nos. 1 and 1(a), dated the 18th April, 1935.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiffs Nos. 1 and 1(a).

No. 52. Kanai Lal Mitra, witness No. 11.

T. S. Nos. 1 and 2 of 1934.

Deposition of witness No. 11 for the plaintiffs 1 and 1(a) taken on solemn affirmation on the —— day of April 1935, before Babu Nikunja Behary Banerji, 3rd Addl. Sub-Judge of Alipore.

Examination.

My name is Kanai Lal Mitra, son of late S. P. Mitra, by caste ——. My age is 27 years. I reside at 52/1 Sitaram Ghosh's Street, Pargana ——, District 24-Parganas. My occupation is service.

I am an assistant clerk of Official Assignee in his office. I have brought the records called for from him. They are seven in number. I have been directed by the Official Assignee to produce them in Court. They were kept in his office. They were filed by the insolvents in the Insolvency Act. Since then they are in his custody.

No cross-examination.

N. B. Banerji,
S. J.
18-4-35.

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No. 53.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 211-217—*Deposition of Wahed Ali Khan, witness No.* 1 *for defendants Nos.* 3 *and* 4 (*in T. S.* 2 *of* 1934), *dated the* 24*th April* 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for defendants Nos. 3 & 4 (in T. S. 2 of 1934).

10

No. 53. Wahed Ali Khan, witness No. 1.

Deposition of witness No. 1 for the defendants 3 and 4 in T. S. No. 2 of 1934 taken on solemn affirmation on the 24th day of April 1935, before Babu Nikunja Behary Banerji, 3rd Addl. Sub-Judge of Alipore.

Examination.

My name is Wahed Ali Khan, son of Esanullah. My age is 30 years. I reside now at Khidirpur, District 24-Parganas, where I am a trader.

20 The name of my father is Esanulla. I hold a Wakf property under *ticca*. I have taken a *ticca* or lease of a garden with lands from Saiyad Jahir Hosain a Muktear of Mirza Syedali when he went to Lucknow. It was for 15 years from 1337 to 1351 Fasli. There was a written deed. It was registered. The Kabuliat was executed by me and my father Esanulla Khan in favour of Mirza Sayedali Bahadur. It is perhaps dated 4th June 1929. This is the Kabuliat. It was written by Bhagibati Prasad Nigam. The Kabuliat is marked Ext. K. Before this lease my father was in possession of the Kabuliat land. I think that it was in his possession for abont 30 or 40 years. I used to pay rents to Mirza Syedali Bahadur either by money order or to his 30 Muktear when he went to Lucknow. Before that my father used to pay rents to Mirza Syedali Bahadur when he was alive. Witness produces three M. O. receipts. They are marked Exts. L to L2. I never paid rents to Hashem Ali Khan. No rents were ever paid to him with my knowledge. I have been always hearing of the estate being Wakf, and of rents been paid to the Wakf estate. My father is about 80 years old. He is very ill. He is not physically fit to come to Calcutta.

Cross-examination for plaintiffs Nos. 1 and 1(a).

Cross-examined by counsel for plaintiffs Nos. 1 *and* 1(a):—I did not 40 examine the revenue record relating to the land covered by the Kabuliat to find out whether the land appertained to Wakf estate. My father must have done so, otherwise he would not have executed the Kabuliat jointly with me. He did not examine such record in my presence. I have not yet examined the record up to this time to find out the person to whom the land belongs. I do not know if my father has done it up to this time. I do not know what is mutation proceeding. In the Patwari's papers the land has been recorded as belonging to Syedali and others. I do not know

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In the Court of the Srd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1931.

Evidence for defendants Nos. 3 & 4 (in T S. 2 of 1934).

No. 53. Wahed Ali Khan, witness No. 1.

whether Nawab Hashem Ali Khan is one of those other persons. After the death of Prince Kamar Kader mutation in respect of his property might have been in the names of his widow, son and daughter but I do not know it. I do not know it up to this time. Neither any one went to us on their behalf. Before 1929 I did not execute any Kabuliat. My father might have had a Patta in respect of the land. I do not remember to have seen any Patta or Kabuliat about this land before 1929. I have got Zemindary. I have land in Habibpur as Chakdery and not Zemindary. I do not know whether the Kabuliat land is Chakdery Zemindary land. The difference between Chakdery land and Zemindary land is that Chakdery land is held under a Zemindar who is subordinate to nobody except the Government. The area of Kabuliat land is 21 bighas and some biswas(*sic*). I do not remember the quantity of biswas. Twenty biswas make one bigha. The Chakdery land belongs to my father and not to me. I know that the Patwari makes entry in his papers of the name of the person in possession of the land in his village. He is a Government servant. I do not know if it is a rule in Oudh that on the death of a person in possession of land the names of his heirs are entered by a Patwari under orders of a Tasildar. I know that it is the rule that the names of the Maliks are entered by him in respect of the lands in a village. I never saw Hashem Ali Khan before this day. No drum was beaten in our village when his name was entered as alleged by the cross-examining pleader. My occupation is making Gotas or gold and silver laces. I do this work at home. Such laces are sold by me in the Chak Bazar at Lucknow and in Mohajan's houses. I do not remain at home always as nobody can. I did not hear the sound of drum beating. I have never seen a Patwari of the village nor I have enquired of him about this land. Nobody came to me since the date of execution of the Kabuliat by us. Of these 21 bighas only 15 or 16 bighas are under cultivation. The remaining land is covered by trees. Some of the cultivable lands are sublet to tenants and some of them are cultivated by us. I cannot say their quantity. I cannot say how much rent is paid by the tenants. Cultivators have not executed any Kabuliats. We have not given any written lease to any tenant. The rates at which lands are let out vary according to quality of lands. Some tenants pay even Rs. 10 a bigha as rent. None pays rent at Rs. 12 a bigha. My father himself looks after our land as I am engaged in Gota work. My brother and I also look after our land according to our convenience. I have only one brother named Ekramulla. He is older than me. He used to work as a scribe in a press. Now he keeps a grocer's shop in Mahalla Saderganj. This land is about 4 furlongs off from my house. It is 1½ miles off from my brother's shop which is 1 mile off from our house. My father also looks after Chakdari property at Habibpur. He has no other occupation. Kimmon Lodh holds land at the rate of Rs. 4 a bigha. But I do not know how much land he holds. I do not know when and how much rent he paid in this year. Final payment is made in Chait. I do not remember the amount of rent payable by him annually. I can say that Lokai holds 1½ bighas of land at a rent of Rs 15. I do not know how much of it he has paid during this year. I can say that on looking to the accounts. The account of this land

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is kept either by me or by my brother. The tenants pay from time to time and the account is adjusted. My father is illiterate. He knows a little Hindi. Some revenue is paid to Government in respect of this land. It is not paid to Government Treasury. It is paid to Kayest(*sic*) Pathsala as the land is in Mouza Bhuyar. I do not know the reason why. The Collector from Kayest Pathsala comes and realise the revenue. The receipts are at home. Sometimes my father and sometimes I paid the revenue. Nothing has been paid as yet for the current year. Revenue is paid sometimes in two instalments and sometimes in one instalment. I do not remember if it was paid last year by one or two instalments. Sometimes it is paid by three instalments. Last yoar my father paid it. For the last three years there is remission of its revenue. There is also remission of rents payable by cultivators under order of the Government. I cannot say without seeing my accounts how much revenne was paid last year. I do not know what is the amount of remission allowed in this year as the receipt has not been presented to us. Patwari distributes the slips showing the amount of rent and revenue ordered by Government. My *ticadary* must have been in his papers. I have not seen Patwari's papers since I executed the Kabuliat. I saw his papers 6 or 7 years ago showing the entry of my father's name before the date of the Kabuliat. The name of that Patwari was Bhagaban Lal. I do not remember the name of the paper I saw. I do not remember whether in the owner's column the names of Syedali, Amir Begum and Juhi Begum were entered. I do not remember whose names were entered in that column. I saw my father's name in the column of *ticadar* with an entry about his 10 years' lease before the date of the Kabuliat.

Cross-examination for plaintiff No. 2.

Cross-examined by pleader for plaintiff No. 2:—I can read this Kabuliat. No draft was prepared of this Kabuliat. The Kabuliat was written by the scribe according to the dictation of Syed Jahir Hossain with reference to the previous Patta but its terms were settled before. The terms were settled on the very date of its execution on the spot. I did not put any signature on the Kabuliat at the instance of anybody. It is true that at the request of Jahir Hossain I signed the Kabuliat. The old receipts about rents for the land covered by the Kabuliat are not with me. They may remain with my father who paid such rents before the Kabuliat. I have no papers here with me to show that we possessed the land previous to the Kabuliat. They may be at home. My age is 30 years. I had never been to Calcutta before. A man from Calcutta went to my father at Lucknow in his house. When I returned home my father asked me to go to Calcutta, telling me that I was called there for some work and that I should take the receipts for the rents paid as there might be some adjustment of accounts. I did not receive any summons from this Court at Lucknow or from Lucknow Court. I reached Calcutta on Monday day before yesterday. After arrival I received no summons from this Court. I have come here at the request of the Manager of Wakf estate of Syedali, who is now present in this Court-room. The man who brought me from Lucknow paid

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 &4 (in T. S. 2 of 1934).

No. 53. Wahed Ali Khan, witness No. 1.

Re-examination.

my railway fare. The Manager requested me to bring the three M. O. receipts here and to produce them in Court if necessary. I had a talk with him and he told me to say what I know if anything is asked me about the garden.

Re-examined :—My father and I executed the Kabuliat of our own accord out of free-will, (The Manager Makram Ali and Jafar Sheraji are found present in this Court-room during the examination of this witness. N. Banerji).

N. B. Banerji,
Offg. Sub-Judge.
24-4-35.

Read over, interpreted and admitted to be correct.

S. De,
B. C.
24-4-35.

Wahed Ali Khan.
(By his own pen).

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No. 54.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

Nos. 218-220—Deposition of Ashrafuddin Khan, witness No. 2 for defendants Nos. 3 and 4. dated the 24th and 25th April, 1935.

T. Suit Nos. 1 and 2 of 1934.

No. 54. Ashrafuddin Khan, witness No. 2.

Deposition of witness No. 2 for the defendants 3 and 4 taken on solemn affirmation on the 24th day of April 1935, before Babu Nikunja B. Banerji, 3rd Addl. Sub-Judge of Alipore.

Examination.

My name is Ashrafuddin Khan, son of Jayesthali Khan. My age is 34 years. I reside at 5/1B, Mominpur Road, Khidirpore, District 24-Parganas. My occupation is service.

I am a clerk in the office of the superintendent of political pensions. I have brought the papers called for from that office—witness files those papers in Court. There was an enquiry by the superintendent at the instance of Wasika Officer at Lucknow. It was made by Shan Shah Bukth Israil Alim Mirza under the orders of the Superintendent of Political Pensions. I have not brought the papers relating to such enquiry as they were not called for. The enquiring officer submitted his report. I cannot say what was the result on that report.

Cross-examination for plaintiff No. 2.

Cross-examined by pleader for plaintiff No. 2:—The enquiry was not made in my presence. I remember to have seen the order of the superintendent. My duty is to receive and issue and despatch letters and to give the references as a clerk. I cannot say under what circumstances the superintendent passed the order. I have been in service in his office from 9th July 1923. My pay is Rs. 58.

No cross-examination by counsel for plaintiffs Nos. 1 and 1a.

N. B. Banerji,
Offg. S. J.
24-4-35.

Ashrafuddin Khan.
24-4-35.

Re-examination.

On defendants 3 and 4's petition the witness is re-called for further examination:—The letters on the left-hand side of the letter dated 4th February 1919 is in the handwriting of Jananda Roy Chowdhury late head

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 54 Ashrafuddin Khan, witness No. 2.

assistant of the Political Pension office and signed by Mr. Prentice Superintendent of Political Pensions. I know Jananda Babu and the signature of Mr. Prentice. It is marked Ext. J6. These two letters dated 20th March 1931 and 9th April 1931 were received by our office on 23rd March 1931 and 11th April 1931 respectively. The seal mark of Collector's Office on the letter dated 20th March 1931 is marked Ext J7. The note on left-hand margin of the letter dated 9th April 1931 is written by Moulvi Syed Golam Mohiuddin present Head Assistant I know his handwriting. It is marked Ext. J8. The two orders dated 16th April 1931, 20th April 1931, are written by W. Islam Deputy Collector then in charge of Political Pensions and Moulvi S. G. Mohiuddin respectively. I know their handwriting. They are marked Exts. J9 and J10.

Cross-examination.

Cross-examined by pleader for plaintiff No. 2:—Golam Mohiuddin is still in service. He has attended office to-day. I cannot say under what circumstances he wrote the note Ext. J8. I was not present when Exts. J9 and J10 were written. Ext. J9 was not written in consultation with me. I do not know why Mr. Islam wrote Ext. J9. Jnananda Roy Chowdhury retired from service in 1922 or early part of 1923. I cannot say if he is alive. He retired before I entered service. I did not see him write. The note in Ext. J4 is in the handwriting of Jnananda Roy Chowdhury. I cannot say in whose hand the note on the back of Ext. J4 is. The first note in Ext J5 dated 19th September 1917 appears to be in the handwriting of Jnanananda Roy Chowdhury. I cannot say in whose handwriting the 2nd note dated 20th September 1917 in Ext. J5 is. The 3rd and 4th notes dated 21st September 1917 and 24th September 1917 appear to be in the handwriting of Jnanananda Roy Chowdhury.

N. B. Banerji,
Offg. Sub-Judge.
25-4-35.

On defendants Nos. 3 and 4's petition the witness is re-called for further examination :—

Re-examination.

The days for payment of Political Pensions are 3rd and 6th working days of each month. I do not know what were the dates fixed before. The rule regarding such dates changes.

No cross-examination.

N. B. Banerji,
Offg. Sub-Judge.
25-4-35.

Ashrafuddin Khan.
25-4-35.

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No. 55.

Nos. 221-233—*Deposition of Shahanshah Bakht Israil Ali Mirza Bahadur, witness No.* 3 *for defendants Nos.* 3 *and* 4, *dated the* 24*th and* 25*th April*, 1935.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 55. Shahanshah Bakht Israil Ali Mirza Bahadur, witness No. 3.

T. Suits Nos. 1 and 2 of 1934.

Deposition of witness No. 3 for the defendants Nos. 3 and 4 taken on solemn affirmation on the 24th day of April, 1935, before Babu Nikunjo Behary Banerjee, 3rd Additional Sub-Judge of Alipore.

Examination.

My name is Shahanshah Bakt Israil Ali Mirza Bahadur, son of Prince Mirza Mahammad Jogi Bahadur. My age is 50 years. I reside at Garden Reach, District 24-Parganas, where I am a Political Pensioner.

My father was a son of the Ex-King of Oudh. I am the surviving grandson of the late King of Oudh. I am the life certifier of the Oudh family. I am a trustee of the King's Emambara at Garden Reach. I hold several honorary officers such as Vice-President of the People's Association at Garden Reach, President of Oudh family association, life member of the Educational Society at Garden Reach. I am also entrusted with the enquiries by the Superintendent of Political Pensions regarding the affairs of Oudh Royal Family. I knew Juhi Begum as she was my uncle's daughter. The Superintendent of Political Pension held enquiry through me regarding her affairs. Her Mukhtear named M. Toki applied for the commutation of her Wasika to the Commissioner of Lucknow. The latter wrote to the Collector of 24-Parganas to enquire from Juhi Begum whether she really intended to do so. The Collector of 24-Parganas sent a copy of that letter to me and directed me to hold an enquiry. I have brought the letter. Witness hands over the letter to the examining pleader. This is the letter. It was written by Wasika Officer of Lucknow to the Collector of 24-Parganas. It is marked Ext. J(1). I held the enquiry. On the first occasion I did not meet Juhi Begum when I searched for her at the address given in the letter *viz.*, Rangolal Street. Then I searched at premises No. 28, Circular Garden Reach Road and also at her brother Syedali's residence but I could not find her. I reported to the Collector of 24-Parganas that her whereabouts could not be traced suggesting that her pension might be stopped. The Collector stopped her pension for two months probably March and April in 1933. Seeing the Collector's letter witness says that it was in 1931. The second occasion when I made enquiry regarding Juhi Begum was when she came to premises No. 11, Rangolal Street and sent a letter to the Superintendent of Political Pensions a copy of which

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

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No. 55. Shahanshah Bakht Israil Ali Mirza Bahadur, witness No. 3.

was sent to me along with his letter. This is the Collector's letter with a copy of her letter. It is marked Ext. J(2). I was directed by the Collector to record the deposition of Juhi Begum in her own language and send it to him. I recorded her statement in her own language and took her thumb impression thereon and forwarded the same with a letter of my own addressed to the Collector. This is her statement recorded by me bearing her thumb impression. It is marked Ext. M. This is the letter written by me to the Collector forwarding that statement. It is marked Ext. J(3). I knew Prince Kamar Kader. He was my eldest paternal uncle. I know his signature. These two letters to the Collector bear his signatures. They are marked Exts. J(4) and J(5). The witness asks the examining pleader whether these letters relate to the Wakf Estate. I know that Prince Kamar Kader made a Wakf of his property, and that the Wakf is in existence now. My cousin Syed Ali was the first Mutwalli, then says, after the death of my uncle Prince Kamar Kader. In 1917 I and several of my cousin brothers went to hold a Majlis one night in the residential house of Syedali and I cited some hymns myself there. At that time Syedali was the Mutwalli. The Majlis was held in a room on the ground-floor on the left side after entering the house by the gate. I draw a Political Pension of Rs. 500. I am married. My wife's dower is Rs. 25,000. Generally the dower in my family is Rs. 25,000.

Cross-examination.

Cross-examined by pleader for plaintiff No. 2 :—I will not answer the question whether I am an insolvent or not. At this stage Satis Babu pleader requests the witness to answer the questions put to him. I applied for insolvency 20 years ago. My application was granted and I was adjudged an insolvent. I am not sure whether I am still an insolvent. I do not remember the year from which I am getting Rs. 500 as pension. Before that I used to get Rs. 300 and before that Rs. 200. I do not remember in which year my father died. Next says, it was in 1893. My mother was Anjuman Ara Sughra Begum. After the death of my father my mother Sughra Begum Nika-married my paternal uncle Prince Butant Jha Mirza Mahammad Askari Bahadur. The latter is alive. He has only one daughter. I met him last before last Muharrum at his place. I had no talk with him regarding the Suit No. 2. My wife is alive. She gets no pension. She is a member of Oudh Royal Family. As her mother failed to prove the lawful daughter of my father-in-law she gets no pension. I have a step-brother Soleman Mirza by my step-mother Bismilla Begum. She too married M. Askari after the death of my parents. I had no litigation between me and Soleman Mirza. I do not know whether my step-brother Soleman Mirza was in the employ of Madan Theatre Limited. It is not true that Prince Kamar Kader never permitted me to enter his house. I went to his house several times. He died in 1917, then says, in 1919 but I do not remember the month. He died at Ballygunj. He was living then, I believe, with Saheba Khatun there. I cannot say how long he stayed there with her before his death. It must be a short period, it may be 5 or 6 months. I think that he went to Ballygunj from the house where Syedali was living. I forget the number of

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that house. It may be No. 123, Circular Garden Reach Road. I did not meet the Prince before he left for Ballygunj. I did not meet him at Ballygunj. I met him many times at house No. 123, Circular Garden Reach Road, next says, in the house where Syedali's family was residing but not a few days before he left for Ballygunj. I cannot say the year or the month in which I saw him last. I saw him last 8 or 9 months, before his death. At that time he was at premises No. 11, Rangolal Street. He used to go there. I do not know who was with him then. There were many places where the Prince used to go such as premises No. 11 Rangolal Street, 28, Circular Garden Reach Road and the house where Syedali was living. Only once I saw him at house No. 11, Rangolal Street 8 or 9 months before his death. I went there then only to meet my uncle. Out of respect I did not enquire with whom he was living there at that time. As he was older than my father I did not put any questions to him. I found him alone in a room then. I did not see Saheba Khatun but I heard of her. I did not meet any other member of his family except servants. (The cross-examining pleader for plaintiff No. 2 consults counsel for plaintiffs Nos. 1 and 1(a)—N. Banerji). About a month or two before I met the Prince Kamar Kader at house No. 11, Rangolal Street 8 or 9 months before his death I met him at the place of Syedali. Syedali was not present in that room where I met the Prince. He was present in a separate room. Amin Begum and Prince Kamar Kader's mother used to appear before me but the daughters of the Prince and the first and 3rd wives of Syedali did not appear before me. The second wife of Syedali, Rajo Begum used to appear before me. She is dead. Juhi Begum did not appear before me. She used to observe half Purda. When I went to record her statement she stretched out her hand from behind the Purda and stated that she had come to such a condition of health. She was not identified by anybody before me. I knew her voice. I do not remember from which year I was entrusted by the Superintendent of Political Pensions with making enquiries or for how many years I am making such enquiries. You may enquire from the Tasil office. It is not true that Syedali got me engaged in that work through the Collector. I am not sure whether Jafar Shiraji the Manager was then living at premises No. 11 Rangolal Street when I went there to search for Juhi Begum for making the enquiry. He is now living there. I do not know how long. I know him as a Manager of the estate of Syedali Bahadur. Only two maid-servants and none else were living then there. As they were holding the Purda between and Juhi Begum I took them to be latter's maid-servants who were outside the Purda. Juhi Begum and I were seated in the same room with a Purda intervening. I did not look behind the Purda where Juhi Begum was sitting. I cannot say whether there was anybody else other than Juhi Begum in the room behind the Purda. Before making enquiry I did not meet Syedali or anybody on his behalf. After making the last enquiry I did not meet him. I saw Syedali last more than a year before his death. I had seen him also 2 or 3 months before that time. I saw him 4 or 5 months after making the 2nd enquiry. Juhi Begum was then dead. I attended her funeral ceremony. She died at premises No. 11 Rangolal Street. I believe that she lived for

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In the Court of the Srd Additional Subordinate Judge, 24-Parganas.

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No. 55. Shahanshah Bakht Israil Ali Mirza Bahadur, witness No. 3.

a short period—a few months. Before that she used to live at premises No. 28 Circular Garden Reach Road perhaps. She lived there for many years but I do not know for how many years. Before that she used to live with her brother Syedali at his place *i. e.*, his residential house where Imambara is now *i. e.*, premises No. 123 Circular Garden Reach Road. Imambara is not a separate building. It is a part of the residential building. It is on the ground-floor. It is a hall. I had been to the first-floor of that house. The room about this hall used to be occupied by my cousin Syedali. The hall used to be occupied by other members of his family before creation of the Wakf. I cannot say the year. Next says, in 1914 or 1915 as a Baitakkhana or sitting room it was used by Syedali. He ceased to use it as a Baitakkhana from 1917 but I do not remember the month. I had been to premises No. 28 Circular Garden Reach Road many times but I cannot say how many times. I do not remember when I went there last, or last(*sic*) or if anybody accompanied me then or what was the occasion when I went there first or last. I went there to pay my respects to Amir Begum. I do not remember when she died. After her death I had no occasion to go to premises No. 28 Circular Garden Reach Road save and except the last occasion to search for Juhi Begum and the occasion of my cousin Asabjha's daughter's marriage. I do not remember the year in which I attended that marriage ceremony. Amir Begum was then alive. I do not remember how many times I went to house No. 123, Circular Garden Reach Road. No body can remember how many times he goes to his relative's house. I generally used to go to the male apartments to see my uncle Prince Kamar Kader and my brother Syedali. I used to go to the female apartments when Fukur Mahal and Amir Begum were alive and living there. I do not remember when Fukur Mahal died or when and how many years ago. I saw Amir Begum last at house No. 123, Circular Garden Reach Road. I used to go to the female apartments to see Fukur Mahal, Amir Begum and Rajo Begum 2nd wife of Syedali and no other lady. Except at house No. 11, Rangolal Street I did not meet any ladies—witness volunteers—Juhi Begum used to come to my house at No. 47, Ramnagar Lane to see my wife when I was putting up there with my family and she used to talk with me. As I am ill I am speaking slowly.

N. B. Banerjee,

Offg. Sub-Judge.

24-4-35.

Further cross-examined:—I have got three children. Rajju Begum was the sister of my step-mother Bismilla Begum. I knew Humayun Kader first husband of Juhi Begum and a cousin of mine. Soleman Mirza my step-brother is son-in-law of Prince Kamar Kader. I know Loudon Aga and Munne Aga. They are sons of daughter of Prince Kamar Kader. I know Syed Mobarak Hossain brother of my step-mother Bismilla Begum and brother-in-law of Syedali. My step-mother's father was Zubdutuddaula

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Muhammad Saheb. He was father of Rajju Begum 2nd wife of Syedali. He is dead. I do not remember in which year he died or how many years ago he died. I know Nawab Hashemali and Nawab Kasimali. They are sons of Amir Begum's cousin sister. I know Asabja Jani Mirza. He married Syedali's first wife's cousin sister. He resides in Bhagalpur. Now he is in Calcutta. I do not know where Syed Mobarak Hossain resides. I do not know whether Loudon Aga's mother after the death of her first husband married Nawabjan. I saw Amir Begum at the place where Syed Ali was living when I went to meet Prince Kamar Kader about 3 or 4 months before I met the Prince at premises No. 11 Rangalal Street. I did not meet Humayun Kader at house No. 123 Circular Garden Reach Road. I do not remember Syed Mobarak Hossain there or at house No. 11 Rangalal Street. Many times I saw my brother Soleman Mirza at house No. 123 Circular Garden Reach Road. I do not remember to have met him at house No. 11 Rangalal Street. I do not remember if I met Mirza Syed Ali there. Prince Kamar Kader had many servants. I do not know if he had any manager. I do not remember whether he had any Bengali servant. I had never been to the office of Prince Kamar Kader—whenever I met the latter at house No. 123 Circular Garden Reach Road it was generally in his small room on the ground-floor just by the side of the road. I believe that the Prince had 2 or 3 Mosahibs. I met him in his room aforesaid sometimes alone and sometimes sitting with one or two of his Mosahibs. He did not know English but he could put his signature in English and Urdu. I never wrote any letter to him. He also never wrote any letter to me. I had no business with him. I had no monetary dealings with him. I did not see any registered document bearing his signature. I saw his pension bills bearing his signatures in the office of the Superintendent of Political Pensions many times and so I know his signature. As I am the life certifier and I used to get political pension I went to the office of the Superintendent and saw the pension bills. I said the signatures on two letters Exts J(4) and J(5) to be those of Prince Kamar Kader because I saw his similar signatures in his pension bills in the pension office. I am now residing at Paharpur Road in Garden Reach. I have been a life certifier for about 2 or 3 years. I was not so during the lifetime of the Prince Kamar Kader. The witness volunteers—I went to pension office to draw my pension and saw the pension bills of Kamar Kader with his signatures when he also went there to draw his pension. I never went with the Prince to to the pension office to draw my pension. I do not remember in which I saw the Prince draw his pension. I saw him do so many times. I do not remember how many times and commencing from which year. I do not remember when I last saw him in the political pension office. I do not remember if I was then an adjudged insolvent. I do not remember if it was before or after I was adjudged insolvent. Sometimes an old man was with the Prince. I do not remember his name. I do not remember how many years before the death of the Prince I saw him last in the Political Pension Office. It is not true that I never saw him in that office. I am residing at Paharpur in a rented house for more than a year. Before that I was putting up at house No. 47

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 55. Shahanshah Bakht Israil Ali Mirza Bahadur, witness No. 3.

Ramnagar Lane. I do not remember how long I lived at that house. It was also a rented house. Its rent was Rs. 30 per month. My eldest child is 18 or 19 years old. I do not remember how many children I had in 1917. Asabja's daughter was married with Chhangu son of Loudon Aga. During the first part of the marriage ceremony Amir Begum was alive but at the time of Ruksati ceremony she was not alive. I never tried to get my daughter married to Chhangu. Loudon Aga tried to get his son married with my daughter. It is not true that I kept my daughter in Amir Begum's place for getting her married to Chhangu. It is not true that Syedali wrote to me a letter asking me to get away my daughter. It is false that M. Aga Muhammad Yusub accused me of cheating. I have no recollection of a case of cheating brought against me, as it was so long ago. I do not remember whether I tried to remove Syedali from the guardianship of Chhangu through Loudon Aga.

Re-examination.

Re-examination :—My debts have been paid up.

N. B. Banerjee,
Offg. Sub-Judge.
25-4-35.

Shahenshah Bukht Israil Ali Mirza.
25-4-35.

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No. 56.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 56. Hazi Meheruddin, witness No. 4.

Examination.

s. 234 240—*Deposition of Hazi Meheruddin, witness No. 4 for defendants Nos. 3 and 4, dated the 25th April, 1935.*

T. Suits Nos. 1 and 2 of 1934.

Deposition of witness No. 4 for the defendants 3 and 4 taken on solemn affirmation on the 25th day of April 1935, before Babu Nikunja Behary Banerjee, 3rd Addl. Sub-Judge of Alipore.

My name is Hazi Meheruddin, son of Sheikh Din Mohammad. My age is 60 years. I reside at No. 122 Circular Garden Reach Road, District 24-Parganas, where I am a trader.

I was a tenant under Nawab Kamar Kader in respect of premises No. 122 Circular Garden Reach Road. I hold two plots in the premises at a monthly rent of Rs. 34½. My rent was formerly Rs. 21-4 annas. It was enhanced to Rs. 34½ in 1926. I hold the land for about 25 years. I paid my rent to Nawab Kamar Kader before and afterwards to him as Mutwalli when he made a Wakf of his property and to his son N. Seyedali on his death. I got rent receipts or Dakhilas. I have brought some of them. The witness makes them over to defendant's pleader who files them in Court. The old receipts were burnt with my house. The rent receipts bear Makramali's or Kayem Hossain's signature. They were Taulders. They signed the receipts and wrote them in my presence. Proves rent receipts Exts. N to N(9). My land is west of the house of Kamar Kader. I came to know of the Wakf when the office room of Prince Kamar Kader where I used to pay my rents was shifted elsewhere and when that room was converted into a mosque and when an Imambara was constructed on the first floor. I attended Majlises at the Imambara at the time of Muharram. I never said my prayers in the mosque. When the Prince was alive the parapharnelia of the Muharram were kept in house No. 11 Rangolal Street and on the 2nd day of Muharram they were taken out from that place to house No. 123 Circular Garden Reach Road from which place the procession used to start. Similar processions were started on the 7th and 10th days of the Muharrum. On the 10th day the procession used to go to Metiaburz. I never paid my rents to the mother and sister of Nawab Kamar Kader. During the time of Muharrum Majlises were held and sweets and bread were distributed by Ujir Ali. The latter lives at house No. 120 Circular Garden Reach Road. These ceremonies have been held from the time of the Wakf up till now. I am a Sunni.

Cross-examination for plaintiff No. 2.

Cross-examined by pleader for plaintiff No. 2:—I carry on a Hokla business at premises No. 122 Circular Garden Reach Road for about 25 years.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 56. Hazi Meheruddin, witness No. 4.

Before that I did it at Nolopara for about 15 years. I hold a license in the name of my father. He died about 6 years ago. I hold it now in the name of my younger brother Methu Shaik. The license of the lodging house is in my name. There is no Hokla shop in premises No. 122 Circular Garden Reach Road. There is one such shop in premises No. 121/2 Circular Garden Reach Road, which stands on Kamar Kader's land which measures about 1½ cottas. I have no business now. I keep a lodging house; besides I have got 8 tenants such as Asadali, Mohammad Gani, Haripada, Gosto Behary Patra, Nur Ahamad, Shajahan, Yusuf Dapali and Nur Muhammad. I rented the house No. 122 Circular Garden Reach Road in 1909 or 1910. There was no Patta or Kabuliat. I got no Amalnama. I took settlement of land and the house standing thereon from Kamar Kader. I paid Rs. 275 as price for the Ghar and got a receipt. The receipt was destroyed by fire. There was no registered deed. I have no other papers than the rent receipts filed to show my settlement in 1909 or 1910. I never paid rent directly to Nawab Kamar Kader. I paid it to his Tasildar. Kisori Babu, Jnan Babu and Kayem Hosain were Tasildars during the time of Kamar Kader. I paid my rents to Jnan Babu during latter's time. After Kamar Kader's death I paid rents to Kisori Babu. I do not remember for how many years. Next I paid rent to Jnan Babu but I do not remember for how many years. Next I paid rents to Kayem Hosain. I do not remember for how many years. Next I paid rents to Makramali. I do not remember for how many years. I paid rents to the Tasildars in Kamar Kader's office all along which was on the ground-floor. That office is still on the ground floor. My house was burnt but in which year I do not remember. It may be 12 years ago. Kamar Kader was not alive then. The mosque erected by the latter is visible from the road. It is in the downstairs. After its erection Nawab Saheb left the room on the first floor above the mosque and shifted his residence to another room. I had been to the first-floor at the time of Majlis but I never entered Kamar Kader's room I did not go to the rooms from and to which he shifted his residence. He did not shift his residence from one room to another in my presence. It is my hearsay. It was in 1917 or 1918. I entered the mosque and found Mesab constructed and other arrangements made there. It was in the same room that existed there. I know Bengali and a little of English. I was a tramway conductor before. I was dismissed by tramway company. That company dismisses its servants for slight faults. The Dakhilas I received at the time of Kamar Kader were similar to those filed by me. When he made Wakf I was not present. I heard of it. He then lived at premises No. 123 Circular Garden Reach Road. He died in Ballyganj. I attended the Majlises 5 or 6 times. I attended it also this year and last year. I do not remember if I did so in the previous year. I attended it in Chait or such other month last year when Muharram ceremony took place. Next says—I do not remember the month. I do not remember the year when I first attended the Majlis 15 or 16 years ago. Sometimes I attended the procession on the 2nd or 7th or 10th day of the Muharram. Muharram is not observed in the house opposite house No. 123 Circular Garden Reach Road. It is

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observed at Koilasarak and Harabash, Uriapara, Mominpur but I cannot name of the owners of the houses in which it is observed. Because they are Sunnis no Majlises are held by them. I do not know if any Shia Mahomedan lives in Kidderpore. I do not know who was Tasildar of Amir Begum and Juhi Begum. Jnan Babu was Tasildar of Saheba Khatun, so far as I remember. I paid rent to her Tasildar. Next says, at that time Nawab Saheb was alive. I had been to premises No. 11 Rangolal Street. Even now I go there. I do not remember the year when I first went there. I have to go there as Makramali resides there. I cannot say exactly for how many years he is living there. I know Jafar Sheraji. He lives at premises No. 11 Rangolal Street. I cannot say for how many years he is living there. On most occasions when I went there I saw Jafar Sheraji and Makramali there. When I first went to premises No. 11 Rangolal Street I intended to see Makramali. I am not summoned. Makramali informed me that he would deliver summons to me in this Court house. At his request I have brought my Dakhilas. I have not paid my rent for about a year. I do not remember for which year my rent is in arrears. I cannot say for which year I have paid up my rents. Makramali has asked me to depose as to the length of time for which litigation is going on and for which years I have paid my rents. He did not pay my travelling expenses. I have come to give my evidence at his request.

Cross-examination for plaintiffs Nos. 1 and 1(a).

Cross-examined by counsel for plaintiffs Nos. 1 *and* 1(*a*):—I have heavy debts amounting to about Rs. 300 on mortgage of my Ghar. I borrowed Rs. 250 and paid Rs. 520 as interest. I do not know what is the exact amount still due. At the time I came to live in house No. 123 Circular Garden Reach Road Prince Kamar Kader did not observe any Muharram or hold any Majlis. He did not do so till creation of the Wakf by him. As a Sunni I never held any Majlis. I did not ever attend any Majlis except at premises No. 123 Circular Garden Reaeh Road. Mersia is held in the Majlis. It is read by one Maulvi. I cannot say who was the Maulvi who read it last. I could understand some facts regarding Hussain Hossain and Ali when it is read. I do not remember now what I heard regarding Ali. I do not remember what I heard then. It was read in Urdu. I understand Urdu partly. Mersia is read for 1½ or 2 hours by a Maulvi standing before the audience sitting.

N. B. Banerji,
Offg. Sub-Judge.
25-4-35.

Read over, interpreted and admitted to be correct.

S. C. De,
B. C.
25-4-35.

Haji Meheruddin.

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No. 57.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 241-244—*Deposition of Jafor Hossain, witness No.* 5 *for defendants Nos.* 3 *and* 4, *dated the* 26*th April* 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 57. Jafor Hossain, witness No. 5.

Deposition of witness No. 5 for the defendants 3 and 4 taken on solemn affirmation on the 26th day of April, 1935, before Babu Nikunja Behari Banerji, 3rd Additional Sub-Judge of Alipur.

Examination.

My name is Jafor Hossain, son of Abbas Hossain, by caste ————. My age is 75 years. I reside at Matiaburz, District 24-Parganas. My occupation is service.

I am about 75 years old. I knew Prince Kamar Kader and Mirza Syedali Bahadur. I came to know the latter as he called me and asked me to read in the Wakf Imambara. I am a Sozekshan. Since he asked me to read in the Imambara I have been reading there for about 11 or 12 years. I get Rs. 15 per year as my remuneration. I read altogether in the Majlises during Muharrum every year up to 40th day ceremony. Besides me others read in the Majlis such as Muhammad Yusuf, Chhutan Saheb, Raza Hossain No. 1 and Raza Hossain No. 2. I do not remember others' names. In the Majis in the Imambara religious hymns are recited, audience assembles and Hisyas or Prosads are distributed and processions are taken out on 2nd, 7th and 10th days of Muharrum. In the Majlis sometimes 400 and sometimes 300 people assemble. In the processions many people take part. I get Rs. 15 from the Wakf estate. There is a mosque besides this Imambara. This mosque and the Imambara are situated at premises No. 123 Circular Garden Reach Road, so far as I remember. In the mosque prayers are said. I have seen people say prayers therein. Premises No. 123 Circular Garden Reach Road at present appertains to an Wakf estate Imambara and not a residential house. Mirza Syedali Bahadur was a Mutwali of the Wakf estate. Before him Prince Kamar Kadar was its Mutwali. I belong to the family of Nawab Madaruddowla. I have no connection with Oudh family. Hashim Ali is a cousin of mine. I saw him for the first time in last Muharrum.

Cross-examination.

Cross-examined by pleader for plaintiff No. 2:—Witness points out Hashem Ali and Loudon Aga present in this Court room as persons seen by him during last Muharrum. I was not invited to attend the dinner that

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 57. Jafor Hossain, witness No. 5.

followed the Majlis. I have no other work than what I have stated above. I read only Soze in the Sahi Imambara at Matiaburz and do no other work. I get Rs. 18 as salary per month from Sahi Imambara at Matiaburaz, Since I was 12 years old, I have been doing this work. Syed Ismile is also an employee there and reads Wakia. This answer is given to the question "who is Syed Ismile" who is instructing the pleader for defendants Nos. 3 and 4. I received summons before the Muharrum. I do not remember the date when I got it. I did not attend Court regularly since that date. I attended Court yesterday. Day before yesterday there was a Majlis in Wakf estate Imambara and the manager told me there to attend Court on the following day to give my evidence. I call him manager. I do not know his name. I know the dates fixed for the Majlis. So I went there on the 10th day when the manager told me. I have got my own house at Dhamkheti Batikal on the land formerly belonging to Mirza Matim and now to Janaki Nath Ray. I hold about 4 cattas of land. I paid rents to Mirza Motim. I have paid also rent to Janaki Babu, that was due to Mirza Motim. I have not paid rents to Janaki Babu for 2 or 3 years as he has demanded an enhanced rate and as there is a dispute between him and me. I have not brought any receipts with me. I have not brought any papers to show that I hold the land. There was no Patta or Kabuliyat when I took settlement of the land from Mirza Motim. I have been living on the land since the life time of the Ex-King of Oudh. I did not take any lease from Mirza Motim. The land was left vacant. I occupied it during the life-time of the Ex-King of Oudh. I was born at Matiaburz. Not to speak of me, no tenant paid rent to the Ex-King. I paid rents to Sir Jehan Kader. I do not remember for how many years. After his death I paid rents to his daughters named Susurjigar Begum and Murtaza Begum for about 25 or 30 years. After them the property has been taken by Janaki Babu. My house is about 2 or $2\frac{1}{3}$ miles off from premises No. 123 Circular Garden Reach Road. Majlises are held in the Sahi Imambara at 10 A.M. on the day time. They are held at premises No. 123 Circular Garden Reach Road at 11 P.M. in the night. We never read together. We five read one after another. Noha Khan stands and reads last. No time is fixed for my reading. I read as long as I like. Raza Hossain first reads Sosthan. When I first began to read at premises No. 123 Circular Garden Reach Road I saw the manager. The length of the room where I read is 14 or 16 cubits in length and is about 8 or 9 cubits in width. There is another room in which the religious relics are kept. In the room the size of which I have just given Majlis is held, Mersia is recited and the audience assembles there. If it does not accommodate all the people some of them sit on the ground-floor where Hisyas are kept. In the adjacent room zerics, medis, and alams are kept and candles and incense burn there. I have seen the mosque since I have been going there. I go at 11 P.M in the night when Majlis is held. I do not go there at Namaj time. There I did not see Imam. I do not know whether there was an Imam. When there is a mosque there must be an Imam. Only Mutwali lives in one room at premises No. 123 Circular Garden Reach Road. His family may live there. None else lives there. The daughters

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and son of Syedali are the present Mutwalis. They live now in that room.

N. B. Banerjee,
Offg. Sub-Judge.
26-4-35.

Read over, interpreted and admitted to be correct.

S. De,
B. C.
25-4-35.

Jafar Hossain.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 57.
Jafor Hossain, witness No. 5.

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No. 58.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 245-255--Deposition of Hari Santosh Chatterjee, witness No. 6 for defendants Nos. 3 and 4, dated the 26th and 27th April, 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 58. Hari Santosh Chatterjee, witness No. 6.

Deposition of witness No. 6 for the defendants Nos. 3 and 4 taken on solemn affirmation on the 26th day of April 1935, before Babu Nikunja Behary Banerjee, 3rd Addl. Sub-Judge of Alipore.

Examination.

My name is Hari Santosh Chatterjee son of Nilmoni Chatterjee. My age is 36 years. I reside at 65, Hindusthan Park Ballygunj, District 24-Parganas. My occupation is service.

I am a clerk in the assessment department of Calcutta Corporation. I have brought the records of 1914-20 called for *viz.* the assessment registers of 1914-15 to 1919-20. These registers are kept under the Calcutta Municipal Act. Seeing the assessment register for 914-15 to 1919-20 witness says that premises No. 27 Circular Garden Reach Road was recorded formerly in the name of Saheb Jadi Asrapannesa Begum and afterwards in the name of Prince Kamar Kader Mirza Muhammad Abedali Bahadur mutwali of the Wakf estate. There is nothing in it to show the date of this change. The last entery is in the handwriting of Suresh Chandra Banerji. I know his handwriting. It is marked Ext. O. Seeing the entry in that register regarding premises No. 28 Circular Garden Reach Road witness says that it was recorded in the name of Prince Kamar Kader Mirza Bahadur, 123 Circular Garden Reach Road formerly and afterwards the words Mirza Bahadur 123 Circular Garden Reach Road were deleted and replaced by the words Mirza Muhammad Ahedali Badadur Mutwali of the Wakf estate (123 of this road). This entry is also written by Suresh Chandra Banerji. It is marked Ext. O(1). Seeing the entry in register for 1924-25 to 1926-27 regarding No. 1 Dent Mission Road witness says that that premises was recorded formerly in the name of Prince Kamar Kader Mirza Muhammad Abedali Bahadur Mutwali to the Wakf Estrte, 11 Garbari Lane, Khidirpur and afterwards in the name of Mirza Muhammad Sayadali Bahadur mutwali, Wakf Estate of late Prince K. K. Bahadur. This entery is written by Panchanon Mukherji. I know his handwriting. The entry is marked Ext. O(2). Seeing the entry in the register of 1914-15 to 1919-20 regarding 55/1/1 Diamond Harbour Road witness says that it was recorded in the name of Prince Kamar Kader Mirza Bahadur changed into that name with the words Muhammad Abedali Bahadur mutwali of the Wakf Estate, 123, Circular Garden Reach Road.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 58. Hari Santosh Chatterjee, witness No. 6.

Seeing the register of 1913-14 to 1918-19 regarding premises No. 151/1, Circular Garden Reach Road witness says that it was recorded formerly in the name of Prince Kamar Kader Mirza Bahadur changed into Prince Kamar Kader Mirza Muhammad Abedali Bahadur mutwali of the Wakf Estate. Seeing the entry in the same register regarding premises No. 120/1, Circular Garden Reach Road witness says that it was recorded formerly in the name of Prince Kamar Kadar Mirza Bahadur changed into the same name with the words Mirza Abedali Bahadur mutwali of the Wakf Estate. The entries are written by Panchanon Mukherjee. I know his handwriting. They are marked Exts. O(3) to O(5). Seeing the entry in Pucca register of 3rd Quarter of 1919-20 to 1923-24 regarding premises No. 123 Circular Garden Reach Road witness says that it is recorded in the name of Prince Kamar Kader Mirza Muhammad Abedali Bahadur as mutwali to the Wakf Estate. Seeing the entry in the same register regarding premises No. 11 Rangolal Street witness says that it was recorded formerly in the name of Prince Kamar Kader Bahadur mutwali to the Wakf Estate but changed afterwards as Prince K. K. Mirza M. Abedali Bahadur Mutwali to the Wakf Estate, The two entries are written by Panchanon Mukherjee. They are marked Exts. O(6) and O(7). Seeing the entry in the same register regarding premises No. 120, Circular Garden Reach Road witness says that it was recorded in the name of Prince K. K. Mirza Muhamad Abedali Bahadur Mutwali Wakf Estate, No. 11 Garbari Lane and that there was no change regarding it. Seeing the entry in the same register regarding premises No. 115 Circular Garden Reach Road witness says that it is recorded in the name of Prince Kamar Kader Mirza Muhammad Abedali Bahadur Mutwali to the Wakf Estate (No. 11, Garbari Lane). These entries are in the handwriting of Panchanan Mukherjee. They are marked Exts. O(8) and O(9). Seeing the entry in the Bustee register of 1919-20 to 1923-24 regarding premises No. 28 Ramkamal Street witness says that it was recorded in the name of Prince Kamar Kader Mirza M. Abedali Bahadur Mutwali to the Wakf Estate, 123, Circular Garden Reach Road and that there was no change in it. This entry is typed. It is marked Ext O(10). Seeing the entry in the Pucca register of 1928-29 regarding premises No. 7 Ekbalpur Lane witness says that it was recorded in the name of Prince Mirza Syed Ali Bahadur but the words Mutwali, Wakf estate of late Prince K. K. Bahadur were added to it. The entry is written by Panchanon Mukherji. It is marked Ext. O(11). Seeing the entry in the same register regarding premises No. 68, Ekbalpur Road witness says that it is recorded first in the name of Shaik Hanif and Nawab Fakir Mahal Saheb, 123, Circular Garden Reach Road and it is changed into Mirza Muhammad Syed Ali Bahadur Mutwali, Wakf Estate of late Prince K. K. Bahadur. The entry is written by Panchanon Mukherji. It is marked Ext. O(12). Seeing the entry in the Bustee register of 1926-27 upto date regarding premises No. 45 Circular Garden Reach Road witness says that it was recorded formerly in the name of Prince Kamar Kader Mirza Muhammad Abedali Bahadur Mutwali of the Wakf Estate, 123 this road and that it is changed into the name of Mirza M. Syedali Bahadur Mutwali of the Wakf Estate of late Prince K. K. Bahadur. This entry is written by Panchanon Mukherjee.

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It is marked Ext. O(13). Seeing the entry of the same register for 1927-28 upto date regarding premises No 30 Dent Mission Road witness says that it was recorded formerly in the name of Prince Kamar Kader Mirza Muhammad Abedali Bahadur Mutwali to the Wakf estate and that it is changed into the name of Mirza M. Syedali Bahadur Mutwali to the Wakf estate of late Prince K. K. Bahadur. The entry is written by Panchanon Mukherjee. It is marked Ext. O(14). Seeing the entry in the same register witness says that premises Nos. 30 and 31, Dent Mission Road have been numbered 72 and 70 Pipe Road respectively and that premises No. 31, Dent Mission Road was recorded formerly in the name of Prince Kamar Kader Mirza M. Abedali Bahadur Mutwali of Wakf estate but changed afterwards in the name of Mirza M. Syedali Bahadur Mutwali of the Wakf estate of late Prince K. K. Bahadur. This entry is written by Panchanon Mukherjee. It is marked Ext. O(15). Premises Nos. 32 and 32/1, Dent Mission Road have become Nos. 68 and 66. Corrections of entries regarding them are the same as in respect of premises Nos. 30 and 31 Dent Mission Road. Premises No. 50/2, Dent Mission Road has been numbered 6. The changes in the entry about it are the same as in respect of premises No. 30, Dent Mission Road. The entries are written by Panchanon Mukherjee. They are marked Exts O(16) to O(18). Seeing the entry in the same register regarding premises No. 1 Mominpur Road witness says that it was recorded in the name of Mirza M. Syedali Bahadur Mutwalli, Wakf Estate of late Prince K. K. Bahadur, 123, Circular Garden Reach Road and that there is no change in it and that this premises has been transferred from Pucca to Busti Register. The entry is written by Panchanon Mukherjee. It is marked Ext. O(19). Seeing the entries in the same Busti Register regarding permises Nos. 1/1, 2, 2/3 and 2/4, Bhukailash Road and No. 3, Ekbalpur Road, witness says that the changes are the same as in respect of premises No. 30, Dent Mission Road. Such entries are written by Panchanon Mukherjee. They are marked Exts. O(20) to O(24). Seeing the entry in Busti Register of 1914-15 to 1919-20 about premises No. 3 Kailasarak Lane witness says that it was recorded formerly in the name of Nawab Fakir Mahal Saheba 123, Circular Garden Reach Road changed into Prince K. K. Mirza M. Abedali Bahadur Mutwalli of Wakf Estate. This entry is written by Suresh Ch. Banerjee. It is marked Ext. O(25). Seeing the entries in the same register regarding premises Nos. 16, 17, 18/1, Kailasarak Road witness says that they were recorded formerly in the name of Nawab Fakir Mahal Saheba changed into Kamar Kadar Mirza M. Abedali Bahadur Mutwalli of the Wakf Estate. The entries are written by Suresh Chandra Banerji. They are marked Exts. O(26 to O(28). Seeing the entries in the same register regarding premises No. 7 Kailasarak Road witness says that it was recorded formerly in the name of Prince Kamar Kader but changed with words Mirza M. Abedali Bahadur Mutwalli of Wakf Estate, 123, Circular Garden Reach Road with words added *viz.* Babu Sankata Prosad Sarma for self and as natural guardian of his minor brother Monprosad Sarma and Prince Kamar Kader Mirza Muhammad Mirza. The entry is written by Suresh

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Banerji. It is marked Ext. O(29). The words '1920-21' are written in the column of owner against Sankata Prosad Sarma. Seeing the entry in the same register witness says that premises No. 18, Kailasarak Road was recorded in the name of Prince Kamar Kader Mirza Abed Bahadur, 123, Circular Garden Reach Road changed afterwards into the same name with the added words 'Mutwalli' of the Wakf Estate and P. S. Moris Esq, Sub-lessee. This entry is written by Suresh Ch. Banerji. It is marked Ext. O(30). Seeing the entry in the same register regarding premises No. 11, Kailasarak Road witness says that it was recorded in the name of Prince Kamar Kader 123, Circular Garden Reach Road changed with the words Mirza M. Abedali Bahadur Mutwalli of Wakf Estate. This entry is written by Suresh Ch. Banerji. It is marked Ext. O(31). Seeing the entry in the same Busti register regarding premises No. 7 Ekbalpur Road witness says that it was recorded in the name of Prince K. K. Mirza M. Abedali Bahadur, 123, Circular Garden Reach Road changed with the added words Mutwalli of Wakf Estate. This entry is written by Suresh Ch. Banerji. It is marked Ext. O(32). Seeing the entry in the same register regarding No. 35, Mominpur Road witness says that it was recorded in the name of Alekjan Bewa of 35, Mominpur Road changed into Prince Kamar Kader Mirza M. Abedali Bahadur Mutwalli of the Wakf Estate, 123, Circular Garden Reach Road. This entry is written by Suresh Ch. Banerji. It is marked Ext. O(33). Seeing the entry in the assessment Pucca Register of 4th quarter of 1925-26 up to date regarding premises No. 120, Circular Garden Reach Road witness says that it was recorded formerly in the name of Prince Kamar Kader Mirza M. Abedali Bahadur Mutwalli of Wakf Estate, 11, Garbari Lane changed into Mirza M. Syedali Bahadur Mutwalli, Wakf Estate, late K. K. Bahadur. This entry is written by Panchanon Banerji. It is marked Ext. O(34). It also shows the name of Shaik Ujirali changed into Wajir Ali as occupier. I have brought the assessment register both Pucca and Busti in respect of Ward No. 7. It relates to 4th quarter of 1928-29 up to date. Seeing the entries in the registers witness says that there is no such premises as No. 132, Lower Chitpur Road. Mutation is made in the assessment department of Calcutta Corporation, in which I work. The rules are embodied in assessment manual. I know the mutation procedure when an application is made by an owner or an occupier of a house in Calcutta to assessor the latter sends it to divisional Sub-assessor for information and report. The latter sends it to assessing inspector for local enquiry. The Sub assessor calls for a deed if any. It is returned after an extract of it being taken. Then mutation notices are issued to both purchaser and vendor fixing a date of hearing. The deputy assessor passes order after a hearing. Then the file is sent to the Officer in charge of section for necessary correction of the record. Assessment register are kept permanently. Of other connected papers some are kept for 3 years, some for 12 years, some permanently and the remainder is destroyed. I know the assessor's signature. Seeing the assessment bills witness admits them to have been issued from the assessment Office of Calcutta Corporation. Only one of them bears

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the signature of D. N. Ganguly as acting assessor. Other bills bear the signatures of Mr. P. Trivedi the assessor. The bills are marked Exts. P to P(44).

Cross-examined by pleader for plaintiff No. 2:—I am in service in Calcutta Corporation since 1924 September. I entered the assessment department as a clerk. My duty was to check the rates. I still do that work. I also make necessary corrections in the registers. I started service with Rs. 40 per month. It is enhanced to Rs. 50 and afterwards to Rs. 90. I do not remember the year from which I began to make necessary corrections in the assessment register. I still do that work occasionally when there is want of officer. My other duty is to produce documents called for in Court and to give evidence. This duty is imposed on me for the last two years. There are other clerks to correct the assessment registers. I cannot say their number. Panchanon Mukherji is one of them. He is in service. Suresh Ch. Banerjee used to do this work also all along but he retired from service 4 or 5 years ago. I have brought the assessment registers from the record room. Every register is sent to the record room 6 or 7 years after every revaluation. I am summoned. Next says, the assessor has been summoned and not I to produce the registers. I have brought the registers under his order. On my requisition the men of the record-keeper brought out the registers from the record-room. I made the requisition about 2 days ago, on reference to the summons, according to general order. The summons is in my office. I have not brought it. The date mentioned in it has expired. One of defendants' pleaders informed me by a letter of this date for production of the registers called for. The dates of correction of the registers for mutation are not noted in them. The initials of the officers making the corrections are not put therein. The entries in the registers do not show the names of the persons who made the necessary corrections. From the hand-writings of the entries shewn to me I say the names of persons who made such entries as I know their hand-writings.

N. B. Banerjee,

Offg. Sub-Judge.,

26-4-35.

Further cross-examined:—I cannot say on which date the changes in the owner's name in the owner's column were entered in the assessment register of 1914-15 to 1919-20 in respect of premises Nos. 27 and 28, Circular Garden Reach Road and 55/1/1, Diamond Harbour Road. It must be within the period covered by the register. The register does not show the order of the deputy assessor and its date in the case of every such change. I was not present when the changes were made. I was not in service then. I do not know the dates on which those changes were made or on which those orders were made. I can not say when the changes I have spoken of in the

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 58. Hari Santosh Chatterjee, witness No. 6.

examination-in chief in respect of owner's name were made and when the orders necessiting such changes were made. It must be within the period covered by the registers. It may be in the year 1914-1915 or 1919-20 or in the intervening period. I cannot say whether any documents were produced by any of the applicants for mutation before the passing of the orders. I have spoken of the procedure about the production of documents. I do not know whether any applications were made for the changes made or whether any enquiries were made or not. I have no personal knowledge of it. I do not know whether any notices in the above cases were served or not. I do not know what the orders were. I do not know whether any orders were passed or not, unless orders were passed how could the changes be made. ? I cannot specify the papers which are kept for 3 or 12 years or permanently. I have no personal knowledge as to the circumstances under which the changes were made.

No cross-examination by plaintiffs Nos. 1 *and* 1(*a*).

N. B. Banerjee,
Offg. Sub-Judge.
27-4-35.

H. S. Chatterjee.
27-4-35.

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No. 59.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 256-261—*Deposition of Md. Eusuf, witness No.* 7 *for defendants Nos.* 3 *and* 4, *dated the* 27*th April*, 1935.

Title Suits Nos. 1 & 2 of 1934.

T. S. Nos. 1 and 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 59. Md. Eusuf, witness No. 7.

Deposition of witness No. 7 for the defendants 3 and 4 taken on solemn affirmation on the 27th day of April 1935, before Babu Nikunja Behary Banerji, 3rd Addl. Sub-Judge of Alipore.

Examination.

My name is Md. Eusuf, son of Md. Ali. My age is 37 years. I reside at Matiaburuz, District 24-Parganas. My occupation is service.

I am a Hadis Khan *i. e.*, a reader of Hadis. I have to sit on the pulpit, utter praises of the Almighty and the Prophet and Ali and have to recite the tragedy of Karbala. I am an employee in Badshahi Imambara at Matiaburuz and also as a reciter of Koran in the Wakf estate of late Prince Kamar Kader. I also read Hadis in last mentioned Wakf estate during the Muharram. I do so for the last 14 or 15 years. I have known that Wakf estate from the time when Prince Kamar Kader called my father and told him to read Hadis in his Imambara as he used to read in his father's Imambara and promised to pay his remuneration from the Wakf estate. My father was also a reader of Hadis. This talk took place probably in 1918. My father was reading Hadis from before the alleged talk. That talk took place in my presence. My father died about 12 years ago. I began to read Hadis when Syedali was the Mutwalli I got Rs. 15 as my remuneration for reading during the Muharram. I got Rs. 7 per month for reading Koran. My father received remuneration from the Wakf estate of Kamar Kader. Premises No. 123 Circular Garden Reach Road contains a mosque and an Imambara. Prayers are said in the mosque. I have said my prayers there. I have read also congregational prayer on one occasion on an Id day in the mosque. I have seen 2 or 3 prayer criers *viz.*, Fedu Hosain, Abdul Kasem and Mohammad Mirza. I have seen also an Imam named Moulvi Hakim Syed Mohammad Saheb. In the Imambara religious relics such as Alum Tazia, Medi etc., are kept, Majlises are held and Hisyas are distributed. Processions also start therefrom. I always take part in the Majlises and processions. I also get Hisyas (or Prosads). They are distributed by many people. Formerly Ujir used to distribute them. The processions are taken out on 2nd, 7th and 10th days of Muharram. Persons numbering 200 or 400 or more attend the Majlis. Both Shias and Sunnis attend the Majlis.

Cross-examination.

Cross-examined by pleader for plaintiff No. 2:—I reside at Matiaburz in the hut of my mother. I have no Koti of my own. The hut stands on

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1931.

Evidence for defendants Nos. 3 & 4.

No. 59. Md. Eusuf, witness No. 7.

the land of Kali Prosanna Ghose. I do not know the quantity of that land or the amount of rent payable for it. I have no concern with it. My father gave it to my mother as her dower and I live there. My mother is alive. I have a brother but no sister. I cannot say even by guess the year in which my father died. I do not remember it. Every year anniversary of my father's death is observed. I can say the date and the month but not the year. It is 27th day of Sabirat. I read Koran on the tomb of Kamar Kader for the last 6 or 7 years. That tomb is within Badshahi Imambara at Metiaburz I am 37 years old. My only son is dead. He was born about 5 years ago. I cannot say the year of his birth. My father was an employee in Badshahi Imambara and a teacher of the sons of the Princes on Persian subjects. His name was Moulvi Mohammad Ali. I do not remember the year in which I began to read Hadis at the Imambara of Syedali but I think I have been reading it there for about 14 years. I grant receipts for payment of Rs. 15 as remuneration. I know Jafar Shiraji the manager. I got my annual remuneration of Rs. 15 first from Moulvi Kazem Hosain for 4 or 5 years and from Jafar Shiraji for 2 or 4 years and after him from Moulvi Hakim Syed Mohammad in last year. The hut where I live is at a distance of 2 or 2½ miles from the mosque and Imambara at premises No. 123 Circular Garden Reach Road. Every year I say my prayer in the mosque on the dates on which Majlis is held in the Imambara and also during Ramjan. I read congregational prayer on the Id day before last. Allama Syed Ahamed was the Imam at that time. About 30, 35 or 40 people assembled then. He is no longer in Calcutta He is not the Imam but he acted as Imam for his son Moulvi Hakim Syed Mohammad who was the Imam. I did not see him work as Imam on any other occasion I cannot say for how many years his son is working as Imam. I have all along seen Hakim Syed Mohammad work as Imam. His father worked as Imam only on one occasion. I have seen Hakim Syed Mohammad work as Imam for 2 or 3 years. (Hashem Ibrahim Shaleji present in Court room is complained against by pleader for defendants Nos. 3 and 4. He is reported by plaintiff No. 2's pleader as having told him that the witness was telling lies. He is warned to remain silent and not to make any adverse remarks against the witness or anybody else (N. Banerji). Hakim Syed Mohammad is alive but is not in service now. I attend Majlis for the last 14 years but before that I used to accompany my father during my childhood. I have never read in the Majlis anywhere save and except in premises No. 123 Circular Garden Reach Road. From my childhood I attended the Majlis at that premises with my father from my childhood (*sic*). From my boyhood I have been attending it but I might have been absent occasionally but since my service I am regular in my attendance. There has been change in the Majlis since my boyhood. Formerly Majlis was held sometimes on the groundfloor or in the upstairs or in one room or in another room. Now it is held in one room which is in the Imambara and is on the first floor. It is held in that room for 18 or 19 years or less by one or two years but not more. I do not remember whether Prince Kamar Kader was alive or dead when the Majlis was held there for the first time. The witness volunteers, save and except the occasion when

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Prince Kamar Kader asked my father to read in his Wakf Imambara. That talk took place at premises No. 123 Circular Garden Reach Road in my presence. Jafar Hosain Sozekhan, Reza Hosain Sozekhan, Fajle Ali Hadiskhan and others whose names I do not remember were present then. It was at about 9 or 10 P. M at night. I did not reduce the talk into writing. My father died about 10 or 12 years after that talk with Prince Kamar Kader. Mowazim Feda Hosain is not in Calcutta now. I have not seen him in Calcutta for the last 3 or 4 years. I saw him once or twice calling for prayers about 5 years ago. Abul Kasem is not seen by me for the last two years. Two years ago I saw him calling for prayers on two or four occasions. Some 8 or 9 years ago I saw Mohammad Mirza calling for prayers for the first time. I saw do so twice or thrice. I do not know if Feda Hosain, Abul Kasem and Mohammad Mirza were Mosahebs of Sayedali. I never saw them receive any remuneration for their services. I received Rs. 15 annually by granting receipts on slips of paper and not putting my signatures on any account-book. I also got Rs. 14 per month from Badshahi Imambara. I have no other permanent income. I received Rs. 7 after putting my signatures on a register. I come to premises No. 123 Circular Garden Reach Road from a distance of 2 or 2½ miles to receive Hisyas and to read in the Majlis. Hisyas consist of either bread or Poloa or sweet Poloa or milk Sarbat. When I attended the Majlis with my father in my childhood I used to receive Hisyas of the same character. At that time they were not distributed regularly as they are being done now. I know Jafar Hosain. He does not know how to read and write. He can sign his name only. He can read a little of Urdu. I know how to read and write Urdu, Persian and Arabic. I received summons before the last Muharram but I do not remember the date. I attended Court for the last three days at the request of Munshi Makram Ali. After the service of summons I met Jafar Sheraji but I had no talk with him. When Makram Ali he(*sic*) asked to give evidence regarding what I knew about the Wakf estate. My profit and loss are the same whether the Wakf remains or not. I will not lose my remunerations necessarily if the Wakf does not remain. Syedali's children may pay them to me.

N. B. Banerji,
Offg. Sub-Judge.
27-4-35.

Read over and admitted to be correct.
S. De.,
B. C.
27-4-35.

Mohammad Yousuf.

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No. 60.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 262-267—Deposition of Munshi Makbul Hussain, witness No. 8 for defendants Nos. 3 and 4, dated the 27th and 29th April, 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 60. Munshi Makbul Hossain, witness No. 8.

Deposition of witness No. 8 for the defendants 3 and 4 taken on solemn affirmation on the 27th day of April, 1935, before Babu Nikunja Behary Banerji, 3rd Addl. Sub-Judge of Alipore.

Examination.

My name is Munshi Makbul Hussain, son of Maulvi Mukdum Bux. My age is 45 years. I reside at Rangalal Street, District 24-Parganas. My occupation is service.

I am a tenant under the Wakf Estate of Nawab Syedali for 8 or 9 years in respect of a room on the ground-floor of premises No. 11 Rangolal Street. I pay Rs. 8 per month as rent. I got receipts on payment of rent. I have brought some of them—witness files them. These receipts I got from Munshi Makramali after paying rents. They bear his signatures and his hand-writing. I know his handwriting. The rent receipts are marked Exts. N to N(41). There are many other tenants in respect of rooms adjacent to mine. They live there without their families. The manager lives in one wing of the same building with his family. Munshi Makramali lives on the first-floor whereas the tenants live on the ground-floor. The former occupies the first-floor before I came there as a tenant. Juhi Begum came in March, 1931 and lived there for about a month during her illness. At that time Munshi Makramali went downstairs and lived on the ground-floor. Save and except this one month Juhi Begum never came and lived at premises No. 11 Rangolal Street during the period of my tenancy. The room occupied by me appertains to Wakf Estate.

Cross-examination for plaintiff No. 2.

Cross-examined by pleader for plaintiff No. 2:—I work in the office of Messrs. Bird and Co. on a salary of Rs. 53 at premises No. 16 Coalberth in Khidderpore Dock. I do not remember the month but I occupied the room in 1927. Previous to this I used to live at Seodhur Singh's house at Mansatala which has been acquired by Calcutta Corporation. My wife and children except a boy live in my native place in Arrah town in Arrah district. Only a boy lives with me.

N. B. Banerjee,
Offg. Sub-Judge.
27-4-35.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 60. Munshi Makbul Hossain, witness No. 8.

Further cross-examined:—I have known Makramali since I came as a tenant in premises No. 11 Rangolal Street. He was at all known to me before that. I have no friendship with him. I took settlement from Makramali. I know how to read and write English and Urdu but not Bengali. My duty is from 6 A. M. to 6 P M with 3 hours' recess from 11 A. M. or 12 noon. It takes 15 or 20 minutes to reach my place of duty from my residence but if the bridge be open it takes a longer time. I leave my residence at 5-30 or 5-45 A M. for my place of work. I go twice from home. I take my meals in the hotel. I pay my rent monthly. My rents are in arrears for 4 months including this month. In March last I paid two months' rents for November and December 1934. After that I have not yet paid any rent. The receipt for that payment has been filed. I have been working in the office of Messrs. Bird and Co. for the last 15 years. I hold no letter of appointment. I began my service under the Company on 1st June 1920 I do not possess any papers to show that I am an employee of Messrs. Bird Company on a salary of Rs 53 per month. I am not a cooly of the Company's office. I am a supervisor there. About 4000 coolies serve under me. Near coal berth No. 16 there is a cooly line where the coolies live. It is not a fact that I live in that cooly line. I never went to the wing of the building occupied by Jafar Sheraji with his family at premises No. 11 Rangolal Street. I do not know who lives with him in that building and who are the members of his family. The rooms on the ground floor of the building occupied by him are not tenanted. There are six rooms on the ground floor below the rooms occupied by Makramali. I cannot say the names of the tenants living in the rooms adjacent to mine. They and I pay respects to each other and have no other talks. I cannot say when any of those tenants came and occupied their respective rooms I do not know what amount of rent is payable by each of those tenants as they never paid rent in my presence. Rent is payable at Rs. 8 for one big room. Rent is payable for each of the smaller rooms at Rs. 4. Those tenants do the work of shoeing horses. Rents at such rates have never been paid in my presence. So long I have been there I have been paying rents to Mokramali. He signs the receipts and gives them to me. Sometimes he grants me receipts immediately after payment of rents and sometimes he grants receipts afterwards. I saw him sign his name on the receipts but not on any other document. Juhi Begum came from premises No. 123 Circular Garden Reach Road to premises No. 11 Rangolal Street in March 1931 and stayed there for about a month. I cannot say the date or the time when she came. Her maid-servant accompanied her. I do not know her name. I was not present when she came with her maid-servant. I did not see her because she was Purdanashin. I cannot say she stayed at premises No. 123 Circular Garden Reach Road before she came to premises No. 11, Rangolal Street. I got summons in 1931. After that I got no other summons. I have lost that summons. Makramali has asked me about a week ago to attend Court with the rent receipts. From that day I attended Court for four days only. I came here for the first time on Thursday last. I waited in the Court room the whole day on each of four days. A Court peon with Mokramali served summons on me in 1931. It was not served on

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me through the office of Messrs. Bird Company. I have got verbal leave from my office master to attend Court. I had no talk with Jafar Sheraji during the 4 days in the Court house. I came back from my native place to Calcutta in Id last. I go to my native place once a year. I do not remember the dates as there is no fixed time for my going there. I do not remember the months when I went there except May last when I went there on last occasion. I do not remember the month in 1931 when I went home and returned to Calcutta. The last Id was celebrated in December, 1934 or in January 1935. I cannot say the month in 1932 when I went home and returned to Calcutta. I get leave for one month only every year. How can I exceed it. So long I have been living at the house No. 11 Rangolal Street I have been seeing Makramali there all along without absence. I have seen him there all along except on the occasion of marriage or when he goes home. I do not know the exact period of his absence as I remain always absorbed in my duties. I do not know whether Makramali was convicted under a charge of theft during the period of my stay there or if he was sentenced to jail for 6 months. I cannot say if he remained absent from the house for 5 or 6 months at a stretch. I did not give evidence in that case of which I do not know. Jafar Shiraji was living in the house from before I came. He is still living there.

Cross-examined by counsel for plaintiffs Nos. 1 *and* 1(*a*) :—Makramali's family at present lives in that house upstairs as also the family of Pash Imam. Makramali belongs to Sylhet. When Juhi Begum came to the house his family was not there I do not know if his family was living then elsewhere in Calcutta then in a rented house on Koilasarak Road. His family came to live in this building at No. 11 Rangolal Street after the death of Juhi Begum. I do not remember how long after. Mokram used to live in the first room on the ground floor during her stay. The 2nd and 3rd rooms were occupied by other persons who go abroad. I occupied the fourth room. Now the first-room is occupied by Makramali's brothers and other relations who have come from his native land.

Cross-examination for plaintiffs Nos. 1 and 1(a).

N. B. Banerjee,
Offg. Sub-Judge.
29-4-35.

Makbool Hossain.

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No. 61.

Nos. 268-285.—Deposition of Prince Ishaque Ali Mirza, witness No. 9 for defendants Nos. 3 and 4, dated the 29th and 30th April. 1935.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 61. Prince Ishaque Ali Mirza, witness No. 9.

Examination.

T. Suits Nos. 1 and 2 of 1934.

Deposition of witness No. 9 for the defendants 3 and 4 taken on solemn affirmation on the 29th day of April, 1935, before Babu Nikunja Behary Banerjee, 3rd Addl. Sub-Judge of Alipore.

My name is Prince Isahaque Ali Mirza, son of Prince Ibrahim Ali Mirza. My age is 46 years. I reside at Garden Reach Road, District 24-Parganas, where I am a Political Pensioner.

My father was a son of the Ex-King of Oudh. I am a trustee of the Imambara of the King of Oudh at Garden Reach. I am a Municipal Commissioner of Garden Reach Municipality. I am a member of Haj Committee of 24-Parganas. I am the Vice-President of People's Association at Garden Reach. I am also life certifier of Oudh family. My maternal grandfather was Prince Farruk Shah of Mysore family. I am a descendant of the King of Oudh on my father's side and of Tipu Sultan my mother's side. Prince Kamar Kader was my paternal uncle elder brother of my father. He was my superior and I used to pay my respects to him and he used to come to my place. I get a political pension of Rs. 500 per month. I know premises No. 123 Circular Garden Reach Road. There are a mosque and an Imambara there at present which are in existence since 1917. Before that it was the dwelling-house of Prince Kamar Kader. In 1917 the latter made a Wakf of that property by a registered deed. The deed does not bear my signature. It bears the signature of my father Prince Ibrahim Ali Mirza and my brother Abed Ali Mirza. My father is dead. My brother is alive. I have certainly personal knowledge regarding this Wakf. Majlises are held and prayers are said in the mosque and processions are taken out. I have attended Majlises both during the lifetime of Kamar Kader and after his death during the time of Syedali my cousin. I have also attended processions. Prince Kamar Kader was the first Mutwali of this Wakf. After his death his son Mirza Syedali Bahadur became its Mutwali. I used to visit Prince Kamar Kader when he made the Wakf in 1917. Consultations used to take place between him and my father regarding the Wakf in my presence before its creation. I know when the Wakf was executed. Prince Kamar Kader was in very sound state of mind and body when he created the Wakf. Seeing the Wakfnama witness identifies the signatures of his father and brother. They are marked Exts. Q and Q(1). I know the signature of Prince Kamar

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 61. Prince Ishaque Ali Mirza, witness No. 9.

Cross-examination for plaintiffs Nos. 1 and 1(a).

Kader. Witness points out latter's signatures on the Wakfnama in the page in which they appear. They are marked Exts. Q(2) to Q(21). The Wakfnama was written by Amjad Hosain, next says, Amjad Ali. I know his handwriting. He is dead. The Wakfnama is marked Ext. R. I know the signature of my paternal uncle Sultan Mirza Muhammad Raza Ali. He is dead. His signature is marked Ext. Q(22). I know the signature of Syed Hasan Askari. He is dead. His signature is marked Ext. Q(23). I know the signature of Subdar Jah Jahedali Mirza. He is alive. His signature is marked Ext. Q(24). I know the signature of Dilawar Jah Mirza Muhammad Naki Ali. He is dead. His signature is marked Ext. Q(25). Ext. R is the Wakfnama executed by Prince Kamar Kader. He executed it out of his free will and not out of the influence of anybody. Religious ceremonies as aforesaid are still being performed.

Cross-examined by Counsel for plaintiffs Nos. 1 and 1(a):—I was not present when Prince Kamar Kader signed the Wakfnama. I learnt from my father and brother on the very night at 9 or 9-30 P M. at former's house on his return that the Wakfnama had been executed by him on that day. In reply to my question they told me so. My first question to my father on his arrival at his house was—"To-day was the date fixed for execution of the Wakfnama and for the reading of the Sigha; had these taken place?" He said yes. There was no further talk between him and me about the Wakf. I cannot say how many days or months after that talk I attended the first Majlis at premises No 123, Circular Garden Reach Road, in the next Muharrum. I do not remember the season in which that Muharrum took place. Even before I heard about the Wakf I had attended Majlises held at that premises during Muharrums. In every Shia family Majlises are held in every Muharrum, whether or not a Wakf has been created in that family. The witness volunteers, when a Wakf is created by that family such Majlises are held on behalf of the Wakf. Even in case of a Wakf in a family its individual members hold Majlises of their own accord independently of the Wakf. I occasionally used to attend the Majlises during the Mohurrum at premises No. 123 Circular Garden Reach Road. I have often attended the Majlises during the Muharrum at that premises after the Wakf. I did not attend them regularly in each year either before or after the Wakf. I do not remember whether in the year I attended the Majlis there I attended only one Majlis or more during the Muharrum. Juhi Begum is dead. I did not attend her funeral ceremony. I do not know if the fact of her death was communciated to me. I do not know the date of her death. I do not exactly remember the time of her death. I cannot say it even by guess. I do not remember even the approximate time of her death. Within the last (10) ten years I have visited premises No. 123, Circular Garden Reach Road several times. I cannot say the number of times I visited it during Muharrum and after it. As it is a matter of 10 years I cannot give the proper calculations. This is not due to any defect of my memory. I have not kept a written note of it and so I do not remember it now. If a thing is old it escapes the memory of every body. One remembers some things which are important

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even if they are old. Last occasion I attended Majlis before the Wakf was 1 or or 2 years before its creation. The difference between the Majlises before the Wakf and after it consisted of (1) that the Majlis before the Wakf was private and that after the Wakf was public, and (2) that the number of peop'e attending the latter was larger than that attending the former and (3) the Hisyas distributed were larger in quantity in the case of Majlis after the Wakf than those in the case of Majlis before the Wakf. In the case of private Majlis outsiders may attend it if they come as there is no prohibition against them. The public Majlis is attended by the public for whom it is meant. Anybody may attend it if he wishes. In private Majlis invitations are issued but uninvited persons may attend it if they like. In Wakf Majlises no invitations are issued as the dates are known. No invitations either oral or written are sent in case of Wakf Majlises. I do not know if anybody is sent to collect people to them. Wakf Majlis is also a public Majlis. To my knowledge there is no difference between the two. The object of Muharrum Majlises is the attainment of spiritual benefit both for the holder of the Majlis and for those who attend it. If anybody goes to the Majlis uninvited he will acquire spiritual benefit all the same. I am not a Moulvi and so I cannot give a Fatewa on the point whether he gets a greater benefit than one who attends Majlis on invitation. The witness afterwards expresses his opinion that he acquires more spiritual benefit. I have kept no record of the number of people who attended Majlises before the Wakf but I saw them. I do not remember their number. They numbered 30 or 40. This was the number of people who attended every Majlis held before the Wakf. The number of people who attended the first Majlis after the Wakf was 60 or 70. I attended only one Majlis after the Wakf during the lifetime of Prince Kamar Kader. I do not remember if I attended the Majlis in the Maharum following his death. I attended the Majlis held 2 or 3 years after his death. I do not remember the number of people who attended it on that occasion. But their number is increasing. I do not recollect the year in which I attended next Majlis. I do not remember how long after that Majlis the next Majlis was held. On the occasion of that next Majlis the number of persons attending it was 100 to 125. I say it by guess. I have made no written note of it. I have seen it with my own eyes. I cannot say how long ago it was. It might be 7 or 8 years ago. I might have attended one or two other Majlises during the lifetime of Syedali. Once it was about three years ago. The place where Majlises used to be read was in the room upstairs. There are several rooms in the upstairs. Their number is 5 or 6 approximately. The Majlis is read in the biggest room. There is another room called Jari room. I did not measure the biggest room. I cannot say its dimensions by guess. It may be a little longer than this Court room, but it was not so wide as it is. I cannot say if it is half or $\frac{3}{4}$ of the width of this Court room. I sat sometimes in that room, and sometimes in the Jari room, and sometimes in downstairs. The Jari room was to the east of the biggest room. The length of the latter room was from north to south. The Jari room was on the back of the biggest room. I have not compared the lengths of the Jari room, and the biggest room. So I cannot say if they are of the same length

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No. 61. Prince Ishaque Ali Mirza, witness No. 9.

and width. I cannot say it even by guess. There are 4 or 5 rooms on the ground-floor of the premises No 123, Circular Garden Reach Road. In the lower room I used to sit in the office room where Syedali used to sit near the road side. The Majlises used to be held there between 8 and 10 P. M at night. I do not know if there was a time fixed for them. I joined them on hearing from the people passing on the road or on myself seeing them while passing by the road. I never said my prayers in premises No. 123 Circular Garden Reach Road. My house is about 3 miles off from that premises. I used to come alone to join the Majlises and not in the company of my brothers. I was not present when the Wakfnama was registered. I have stated whatever personal knowledge of the Wakf. I can state also if I am asked anything more. Whatever I knew I have already stated. I have never seen the original Wakfnama before to-day. My father died in 1920. I knew Amjad Ali. He lived at Metiaburz. He used to sell drugs. He used to supply drugs to me. I used to send him prescriptions for supplying medicines to me. He used to send information to me(?) of the medicines not available in writing relating to such prescriptions. Usually I take English medicines but sometimes I take Unani medicines. I know his writing only by notes made by him in slips of papers written to me and attached to such prescriptions. Amjad Ali died 10 or 12 years ago. I do not know if he has left any son. His shop does not exist now. I recognise his signature from slips of papers aforesaid. I do not recollect when he died. He died recently, 2 or 3 years ago. I have seen Sultan Mirza Mahammad Raza Ali sign and write. He wrote letters and notes in notice-book of Imambara in my presence. He wrote a letter in my presence to Shaik Mahammad Kazim. I do not remember how long ago. I cannot say it even by guess. I cannot say what he wrote as I did not read the contents. I do not recollect if I saw him write any other letter. I cannot state the approximate time when or how long ago I saw him write notes. I saw him once or twice making notes in notice book. He wrote the notes in his house at Beniapukur. He was my uncle. I used to go to his house occasionally. He has no children. I am one of his brother's children. I also have seen his signatures on life-certificates of the members of Oudh family because he was a life-certifier. Once or twice he has signed life-certificates in my presence. It is from these three things stated above that I came to know his signature. Hasan Naskari was a teacher of my father. He died about 10 or 12 years ago at Lucknow. He had left for Lucknow 6 months or a year before his death. He used to live in Calcutta at No. 8 Marsden Street. He had no business in Calcutta since he retired from school. I do not remember when he retired from school. He had Zemindary in the district of Jaunpur. Syed Askari left a son who is since dead. I have heard of his son's death. I have seen him sign. I cannot say when I saw him sign. It is very long ago. I have seen him sign letters. I have also seen letters signed by him. I saw his signatures 16 or 17 years ago.

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Offg. Sub-Judge.
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Further cross-examined :—I had seen Prince Kamar Kader 4 or 5 days before the date on which I heard of the Wakf from my father. I had seen him then at premises No. 123, Circular Garden Reach Road, during the day time at about 4 or 5 P. M. This was about one month after I had seen him previously at the same place. Whenever I saw him I always met him at that place. I know premises No. 11, Rangolal Street. I had been to that house only after the death of Kamar Kader. I went there because the Manager of Syedali was there. I do not remember how long after the death of the Prince Kamar Kader I went(*sic*) there that Manager. I did meet the Manager then named Jafar Shiraji. He was an acquaintance of mine; he often comes to me and I often go to him. I had no other object in meeting him. I do not remember where I first met Jafar Shiraji. I do not recollect how long ago I first met him. I cannot say this even approximately as I do not remember it. It must be more than 2 years before the death of Syedali as I have known him for a very long time. It was about 5 years before his death. I came to know him since he became the Manager. But I cannot say how long before the death of Syedali he became the Manager. I did not know Jafar Shiraji before he became the Manager. I first heard of his appointment as Manager and subsequently I saw him work as such. I do not remember the name of the person who first informed me of his appointment as Manager. I heard of it from several other persons. I can not name any of them. Three or four months after I heard of his appointment, I first saw him work as Manager. I had not seen him before I actually saw him work as Manager. I saw him then at premises No. 123, Circular Garden Reach Road. This was 9 or 10 years before Syedali's death. I had been on that occasion there to see my cousin Syedali. I often used to visit Syedali but I do not remember how many times in a year I did so. I do not remember the number of my visits to him in a year. I met every year more than once. I used to meet him 10 or 15 times in a year. I say this by guess. I cannot say whether I saw Prince Kamar Kader as frequently as I saw Syedali. I cannot say if I saw him more or less frequently than I saw Syedali, Prince Kamer Kader used to see my father and not me as I was younger than him. My father was also younger than him. It is not true that Prince Kamer Kader went to see my father in my presence He came to my father's house about two years before his death. Mr. Syedali and another person accompanied him then. I do not know if Mr. Syedali was one of his servants. He used to live at Metiaburz and not at Khidderpore. I do not know what he used to do at Metiaburz. I do not remember if Syedali son of Prince Kamer Kader went to my house to see me. I have never seen Saheba Khatun. I saw the Prince Kamar Kader with his family at premises No. 123, Circular Garden Reach Road before the Wakf. His wife and children removed to premises No. 28, Circular Garden Reach Road after the Wakf but I cannot say how long after the Wakf. I do not remember if they ever returned to premises No. 123, Circular Garden Reach Road before his death. I do not remember whether they went there after his death. Mirza Syedali lived all along at premises No. 123, Circular Garden Reach Road before and after the Wakf during the lifetime of Prince Kamer Kader and also after his death.

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I have never seen the Prince Kamar Kader or Syedali live at any time at premises No. 28, Circular Garden Reach Road. I had been to premises No. 28, Circular Garden Reach Road once or twice. The wife of Prince Kamar Kader did not appear before me So far as I remember, he had two sons and one daughter only. He had only one wife. Mirza Syedali was his eldest child. I cannot say how older he was than me. I do not remember whether his second child was male or female. I do not remember the name of brother of Syedali. I do not remember how long before the death of the Prince Kamar Kader that boy died or what was his age at the time of his death. He had been married before his death. Perhaps he married perhaps(*sic*) the daughter of my uncle Prince Kam Buksh who was a son of Ex-King of Oudh. Prince Kam Buksh was married at Murshidabad. I do not know who was his father-in-law. I know Nawab Hashem Ali Khan. I do not know if Prince Kam Buksh's wife was his sister. I did not attend that marriage but I heard of it. I attended the marriage of Prince's deceased son with the daughter of Kam Buksh at Calcutta. I do not recollect how long ago this marriage took place. It may be 20 or 22 years ago. I joined this marriage at premises No. 1, Duddukipara which was a rented house of Kam Buksh. I do not know whether there were any children of that marriage. I do not know how many wives Syedali had. I do not know how many children he had but he left three children. I do not know any other children of his than those left by him. Similarly I do not know of any other children of Prince Kamar Kader than those I have mentioned. Syedali knew about his father better than myself. I do not know if Syedali brought a suit in Sub-Judge's Court in 1934. Prince Kamar Kader received a political pension of Rs. 4000 a month. My father used to receive a pension of Rs. 500 a month. On his death I was allowed a pension of Rs. 110 a month. I have never seen Saheba Khatun live in the same house with Prince Kamar Kader. I do not know whether the statements of Syedali read out to me (*viz.* those made in Paras 3 and 4 of the plaint of T. S. No. 6 of 1934 of the Court of 3rd Subordinate Judge of 24-Parganas) are correct or not. I do not know whether it is true or not that Prince Kamar Kader was suffering from Paralysis for about 3 years before his death. I do not know whether he was living with Saheba Khatun during those three years at premises No. 11, Rangolal Street. I do not know if the statements contained in Para 5 of the plaint of T. S. No. 6 of 1934 read over to me are correct or not. I do not know if there were any decrees against the Prince or if Prince Baber obtained any decree against him in respect of debts due to other Princes on account of the Estate of the Ex-King of Oudh. I do not know if the statements in Paras 6 to 8 of the plaint of T. S. No. 6 of 1934 are correct or not. I do not know whether Prince Kamar Kader was addicted to cocaine or opium. He never took cocaine or opium or remained unconscious for three or four days at a stretch towards the end of his life under its influence. I never saw him take cocaine or opium. Of the above statements what I mean that he did not take cocaine. So far as I know, he did not take cocaine or opium because I did not see him do so. Husain Askari was also a teacher of other Princes and was a Teacher in King's Madrassa. I do not know if he

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and Saheba Khatun were on familiar terms. I do not remember if my father and some other sons of the Ex-King instituted a suit against Prince Kamar Kader.

Cross-examined by pleader for plaintiff No. 2:—I know very little how to read and write. Dilnoma Mahal was mother of my father. I do not know if she was Muta or Nika wife of my grandfather the Ex-King of Oudh. I did not see her. I do not know what was the amount of her pension. My father had no uterine brother. He left three sons and two daughters at the time of his death. Prince Asgar Mirza was my father's brother by a different mother. My father had two or three wives. They used to live in three different houses. My father used to meet the costs of three establishments. I live in the house purchased by my father. He also lived in that house. It is contiguous to the house of Prince Dilawar Jah. I know Mukti Altap Hossain. He lives at a distance of 5 or 6 minutes' walk from my house. Subdur Jah's house is close to his house. I knew Mirza Muhammad Medi who was called one-eyed Medi. He used to live at a place which was 3 or 4 minutes 'walk from Subdur Jah's house. It is in Bengali Bazar a little off from iron gate. Syed Hasan Askari did not live at Subdur Jah's house. He used to live at Calcutta and come and go to Subdur Jah's place. I do not know whether the latter was a pupil of Hasan Askari. The latter was not my tutor. On my father's death I inherited from him only the house I live in and no other property. Both owner's and occupier's shares of taxes amount to Rs. 29 odd annas. In this property my other two brothers have also got their shares by right of inheritance. They also live in the same house with me. We jointly pay its Municipal taxes. There are six habitable rooms besides a godown, a kitchen and a bath room and a Verandah. We did not get this property from our father because my mother brought a suit against us but I do not know its result. I do not know whether we got this property by inheritance from father or mother. My sister got a share in this property but she sold it to us her three brothers. I do not remember the year of sale. I do not remember with whom that conveyance is or how much we had to pay for it. No wife of my father is alive. Mumi Begum was the uterine sister of my mother. My father did not marry her. She is alive. One of the wives of my father died in my infancy. So I do not remember her name. Kobra Begum was another wife of my father. I cannot say who was her first husband. I do not know if she had any first husband. I know Mir Ali Hosain. He was my father's maternal uncle. I do not know if it is true that my father married his wife. I have only one wife. She was at first wife of Prince Asgar Mirza. After latter's death she was married by me. I am not aware of the Suit No. 972/11 instituted by my father, Prince Baber, Prince Mirza Muhammad Askari and Prince Dilwar Jah against Prince Kamar Kader for administration of the Estate of Prince Muhammad Ali Mirza in the High Court of Calcutta. I do not know if my father had ill-feelings towards Prince Kamar Kader during the years 1911-1918. I never saw any such ill-feelings. Prince Kamar Kader

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

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No. 61. Prince Ishaque Ali Mirza, witness No. 9.

was not adjudged an insolvent. I do not know it. I do not know if my father and three other Princes obtained any decree against Prince Kamar Kader in aforesaid suit. I have not got any document executed by my father relating to lands and houses. I do not know whether Subdur Jah Mirza is the owner of premises No. 8 Marsden Street where I saw Hasan Askari used to live. I do not know where he is now. Subdur Jah Mirza lived sometimes at Metiaburz, sometimes at No. 8 Marsden Street and sometimes at Lucknow. My brother Abedali is living in the same house with me. I had no talk with him regarding my evidence. I did not come to give evidence in this case before yesterday. I might have come to Court on other business. There is good feeling between me and my brother Abedali. I did not speak of my giving evidence in this case to him because he has been suffering from fever and cough for the last 5 or 6 days. He is confined to bed under doctor's advice. I got summons in this case recently but I do not remember the date. I do not know whether my brother Abedali attended Court for 3 or 4 days before as a witness. The date 29th April was not mentioned in my summons for my appearance. I do not know the name of the person who went to me to call me here yesterday. I had no talk with the manager before that I would have to give evidence in this case (witness says this after he is reminded of the oath taken by him by cross-examining pleader—N. Banerji). I did not know who sent him to me. I knew him to be a man of Wakf. During the tiffin time the Manager and I and many other persons were standing on the Court Veranda but I had no talk with the Manager.

N. B. Banerjee,
Offg. Sub-Judge.
30-4-35.

Ishaq Ali Mirza.
30-4-35.

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No. 62.

Nos. 286-304—Deposition of Safdarjah Zahid Ali Mirza, witness No. 10 for defendants Nos. 3 and 4, dated the 30th April and 1st May, 1935.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 62. Safdarjah Zahid Ali Mirza, witness No. 10.

Examination.

T. Suits Nos. 1 and 2 of 1934.

Deposition of witness No. 10 for the defendants 3 and 4 taken on solemn affirmation on the 30th day of April, 1935, before Babu Nikunja Behary Banerjee, 3rd Additional Sub-Judge of Alipore.

My name is Prince Sabdawraza(?) Bahadur son of Prince Furruque Mirza Bahadur, by caste———. My age is 45 years. I reside at 8, Marsden Street, Pargana——— District 24-Parganas, where I am a Political Pensioner.

Prince Farruq Mirza Abuturap Bahadur was my father. He is dead. He was a son of the Ex-King of Oudh. I receive a political pension of Rs. 500 a month. I am a municipal commissioner of Garden Reach Municipality. I am president of Shamshia Zenana Madrasa and Garden Reach Boys' School. I am president of Youngmen's Association at Garden Reach and also of Anjuman Aptari Association of Oudh family. I was also an honorary Magistrate for 6 years up to 1923. I knew premises No. 123, Circular Garden Reach Road as I took part in Majlises held there. I knew Prince Kamar Kader Bahadur. I know that he created a Wakf by a registered deed. One Amjad of Metiaburz wrote that deed. I was present when it was signed by Kamar Kader. I also signed it as an attesting witness. Two uncles of mine named Prince Ibrahimali Mirza Bahadur and Delawar Jah Bahadur and Prince Sultan Mirza Ali Bahadur and manager Mehdi Mukti Saheb Sirajulali Altap Hosain, Nawab Mirza, Abedali Mirza my cousin also signed in my presence as attesting witnesses. I do not remember the names of other persons present then. This is the deed Ext. R. Witness points out his Ext. Q(24) and Syed Hosain Askari's and Mukti Saheb Altap Hossain's signatures which are marked Exts. Q(25) and Q(26). I cannot identify the signatures of other attesting witnesses. There was a talk between my uncle Prince Kamar Kader and Moulvi Syed Husain Askari about the Wakfnama before its actual execution. Husain Askari is dead. I was present when the talk took place. Prince Kamar Kader expressed his great desire to create a Wakf and asked Husain Askari to have it done quickly. For this purpose he came to Husain Askari several times. The talk continued for about 6 or 7 months before the Wakfnama was executed. That time was taken up in consulting big lawyers and also in discussing the matter with Nawab Nasirul Manalik Mirza Shujat Ali Khan Bahadur and other lawyers. Then the draft

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was prepared. Prince Kamar Kader executed the Wakfnama out of his free will. The physical and mental condition of the prince was very good before and after the execution of the Wakfnama. The Wakfnama was all along acted upon since its execution. I have already said before that premises No. 123, Circular Garden Reach Road was converted into a mosque and an Imambara after the Wakf. I have said my prayers in that mosque. I have attended Majlises in the Imambara. Mr. Justice Nasim Ali, Mr. B. Chakravartty were consulted by the Prince Kamar Kader before execution of the Wakfnama. I appeared in a proceeding regarding the permission to lease on behalf of the public against Mirza Syedali and Sundermul. Mirza Syedali applied to the District Judge for permission to lease the Wakf properties to Sundermul, as the lease was not beneficial to the Wakf and as necessary preliminaries were not observed by we(?) as members of the public applied to the District Judge for setting aside that lease. The District Judge did not grant our application. So we moved the High Court as a result of which the case was remanded to him and the lease was ultimately cancelled. The Prince had much confidence in Moulvi Husain Askari. He knew that he would get the best and honest advice from him as he was consulted by other people as well. He was appointed head master of the school established for the Princes when he came from Jaunpore. He was next appointed superintendent of the boarding house school. He had ancestral properties in Jaunpore which he inherited. He also passed the pleadership examination. After this he became our guardian tutor and lived with us. It is absolutely false that the Wakf was created under the undue influence of Saheba Khatun. There was no connection betwen the latter and Husain Askari. The latter was 85 years old when he died in 1926. At premises No. 8 Marsden Street my sister resides and at Metiaburz my elder brother lives and my residence is at both these places.

Cross-examination for plaintiffs Nos. 1 and 1(a).

Cross-examined by Counsel for plaintiffs Nos. 1 and 1(a):—I signed the Wakfnama at 3 or 4 P.M. at premises No. 11 Rangolal Street, formerly No. 11 Garbari Lane. I cannot say if the prince lived there then or not. I went there because I was sent for by the prince, through his servant Achha Mirza. The latter went to Metiaburz where he lives to call me. He told me on previous day to come. He had only said that my uncle had sent for me. I enquired of him why he had sent for me. He informed me that perhaps the Wakfnama would be made. I do not remember if there was any other talk. I arrived there shortly before 3 or 4 P.M. I do not know whether Saheba Khatun was or was not in that house. I had gone straight to premises No. 11 Rangolal Street as Achhan had told me to go there. I had forgotten previously to say that the latter had told me so. I halted there for about 1½ hours after my arrival. After that time I went away with Sultan Mirza to the meadow at about 4 or 5 P.M. I can not name the persons found present there by me after my arrival. All the persons whose signatures appear on the deed signed it with(?) 1½ hours of my stay there. The deed was ready written out before my arrival. I do not remember on how many sheets of paper it was written out. Perhaps the deed was not registered on the same day. I was not present on

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the date of registration. I do not remember whether my cousin Mirza Syed-ali Bahadur was present when I signed the deed. I remember that the first person to sign the deed was the prince Kamar Kader. Next one of my uncles signed it but I do not remember his name. About ½ or ¾ hour after my arrival the Prince Kamar Kader signed the deed.

N. B Banerjee,
Offg. Sub-Judge,
30-4-35.

Further cross-examined:—Since I signed the Wakfnama I did not see it except yesterday in Court. I do not know why there was an interval of ½ or ¾ hour between my arrival and the signature of Kamar Kader. I cannot say how long the latter took in signing the deed. He took about a minute or two to sign it. So far as I remember, Amjad presented the deed to him for signature. I cannot say how long after my arrival Amjad reached the place. After he presented the deed to the Prince the latter glanced at the deed and then signed it. He did not himself read it but had it read over in such a way that every one present might hear. I do not remember who read it out. I do not remember how many sheets were read. The whole deed was read. I cannot say exact how much time was taken to read it. The schedules of properties covered by the deed were also fully read over. I do not remember how many properties were included in the schedules. In my presence Prince Kamar Kader signed the deed only at one place. I left the place after everybody finished signing. I cannot say who signed the deed last. I do not remember who signed immediately before me or after me, approximately 3 or 4 persons signed before I signed. I do not now remember the terms of the deed which were read over at the time. Prince Kamar Kader did not sign the deed while lying down on his bed but he was seated on a masnad with a big(?) pillow at his back at the time of signing. He did not take the assistance of anybody when he put his signature. I do not know whether he had been ailing before he executed the deed. He was not suffering from paralysis then. He never suffered from paralysis. I knew that Dr. Brown was the Civil Surgeon of 24-Parganas. I also know Colonel Dear the Civil Surgeon. He was principal of Medical College of Calcutta. I do not know if he was also the Civil Surgeon. I do not know whether any of those doctors ever treated Kamar Kader. I never saw the latter take cocaine or opium. I do not know whether it was well known that he was addicted to cocaine or opium. I cannot say how long after my signing the deed I next met Prince Kamar Kader but I did meet him. I met him within(?) a year after the date of execution of the deed by him. It was summer or rainy season and not winter then. I cannot say the month of that meeting. I met him several times but I cannot say how many times after his signing the deed. I do not remember when I saw him last after signing the deed. I have some recollection only of the places and the occasions on which I met him after signing the deed. At premises No. 8 Marsden Street in Calcutta I first

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heard of the intended Wakf from my uncle 6 or 7 months before the deed was signed. That uncle was Prince Kamar Kader. Besides two of us Syed Husain Askari was present then. I do not remember if anybody else was present then. I did not sit at the place where consultations with lawyers were made but I used to see the consultations taking place. Many such consultations took place at my house and also elsewhere. I did not mean that they took place at my house but at premises No. 8 Marsden Street. That premises is my sisters' house but I take it as mine. I did not see any consultation with lawyers except those that took place at that house. Mr. Byomkesh Chakravarty was the eminent lawyer who was consulted there. Mr. Justice Nasim Ali was then an eminent lawyer who was also consulted there. I do not know of any other eminent lawyer who was consulted there. I do not know in which year Mr. Nasim Ali commenced his practice. It is not true that he had started his practice 1 or 2 years before he was consulted. At that time he practised at the Alipur Bar but I do not know if he was only a pleader then. Although I did not sit at the consultations I saw them because I used to go to Hossain Askari in course of such consultations. The necessity for my going to him was that when he required papers I took the papers to him. I do not remember which papers I made over to him during the consultation with Mr. B. Chakravarty. There was joint consultation with the latter and Mr. Nasim Ali in the presence of Mirza Sujat Ali Beg and Husain Askari. I cannot say what was the point which required consultation with those four persons. Such consultation took place how long before the date of execution of the deed I cannot say. I do not remember whether a draft of the deed was made before or after the aforesaid consultation. I did see a draft of the deed. I do not remember how long before signing of the deed I saw the draft. The deed was written according to the draft but I do not remember the contents of the draft. I cannot say that the deed was word for word in accordance with the draft. I know that the substance of the draft was reproduced in the deed. I cannot say now what was that substance. I cannot say how long before signing the deed I saw the draft. I say that the Wakfnama was acted upon because:—(1) Majlises were announced verbally to be of the Wakf, I mean those Majlises that used to be held at premises No. 123 Circular Garden Reach Road; and (2) I took the Mosque to be the Wakf Mosque and said my prayers there, there being no Mosque there before; and from outside it has not the appearance of a Mosque. The witness volunteers because I took the Tazia which came from premises No. 123, Circular Garden Reach Road on the 10th day of Muharrum to be Wakf Tazia and joined it. I cannot give any other reason now. I took great pleasure in saying my prayers there by knowing it to be a Wakf Mosque. I came to know it to be a Wakf Mosque because I was satisfied by enquiry that there were Imambara and Mosque in that premises as provided in the Wakfnama. The deed constituted premises No. 123, Circular Garden Reach Road as the Mosque and Imambara. I cannot say how long after signing the deed I made the said enquiry. I made the enquiry because I wanted to know what place was made a Mosque and an Imambara as constituted by the Wakfnama. I said my prayers in that place twice or

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thrice. I do not recollect when I said my prayers last there. I have not said my prayers there during the last five or ten or twelve years. I said my prayers there within the last 15 years. I said my prayers there within 3 or 4 years after signing of the deed I said my prayers there singly and not in congregation. In District Judge's Court when I objected to Sundermul's lease I was represented by Mr. Nasim Ali. Syed Hussain Naskari, Mirza Surat Ali Beg Consul-General of Persia and some other persons whose names I do not remember joined me as objectors to the lease. Mr. Nasim Ali also represented them. I do not know if Saheba Khatun was also an objector and if she was also represented by Mr. Nasim Ali. No written objections to the lease were filed on our behalf, so far as I remember. We applied for time to file objections but our application was rejected. I do not remember if that was written or verbal. I was present in Court then. I was not examined. Although I was present I cannot say whether objection was made on behalf of Saheba Khatun. We objected because we considered the lease to be prejudicial to the interest of the Wakf estate, as the rent reserved by the lease was small compared with income of the property. I knew the income of the property at that time but my memory has become weak now. So I do not remember it now. I do not remember what was the rent reserved by the proposed lease in favour of Sundermul. I do not remember if the proposed lessee had agreed to pay anything in excess of the rent fixed. I was the leader and not Hussain Askari among the objectors to the lease. I subscribed for the expenses along with him, Sujait Ali Beg and some others, Sujait Ali was the largest contributor. So far as the Tadbir was concerned I was the leader. There was only one hearing before the District Judge when the prayer for time was rejected and the lease was sanctioned. I do not recollect whether any objection was made by Amir Begum and Juhi Begum on that occasion. We filed a petition for revision in the High Court against the order of the District Judge. I do not remember whether the name of Hussain Askari appeared in the petition as the first applicant. I do not remember if Saheba Khatun also joined us in that petition. I remember that Amir Begum and Juhi Begum joined us in that petition. Mr. Amir Ali was our Counsel in the High Court. Mr. Wahed Hossain was the Vakil also engaged by us in that case. Mr. Nasim Ali did not practise then in the High Court. Mr. B. Chakravartty appeared for Amir Begum and Juhi Begum. I do not remember if Mr. Pugh appeared for Mirza Syedali. It is not true that Saheba Khatun met all the expenses in that case in the High Court. We incurred the expenses both in the lower Court and in the High Court. Saheba Khatun did not do it. After this case was remanded by High Court Amir Begum and Juhi Begum fully contested the case against the lease. After the remand Syedali was examined in that case as a witness. I do not remember whether Amir Begum and Juhi Begum disputed the Wakf in that case. As far as I remember, our opposition to the lease was weaker than that of those persons. We continued to spend money. As far as I remember, we retained separate lawyers. I do not remember the name of lawyers engaged by us after the

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remand. So far as I remember, Haji Alabux brought Mr. Jorab on behalf of Amir Begum and Juhi Begum. But I do not remember if they engaged Mr. Satis Chandra Ghose, Mr. Jorab, Mr. Amulya Kristo Mitra and Mr. Ibue Imam on their behalf. Alabux was the financier of Amir Begum and Juhi Begum. He told me that he financed them. I have not seen Hussain Askari's Zemindary at Jaunpore but I have seen a Wakfnama executed by him in respect of that Zemindary. I have not seen any revenue papers to show his Zemindary income. Husain Askari seldom went out to meet any body, not to speak of Saheba Khatun. I have never been to the latter. For sometime Saheba Khatun lived at premises at Jamutala *i.e.* at No. 11 Rangolal Street. Prince Kamar Kader lived sometimes at 123 Circular Garden Reach Road, sometimes at 11 Rangolal Street and sometimes at 28 Circular Garden Reach Road. I have met the Prince at the first two places and I have heard of his residence also at the aforesaid third place. I do not know fully how many wives and children Prince Kamar Kader had. I know of his one wife *viz.*, Shah Bahu Amir Begum. She never appeared before me. I do not fully know how many children she had. I know of her three daughters and two sons only. Perhaps Syedali was the eldest of her children. I cannot say exactly how many wives he had. I do not know how many children he had. I know of only three children he left. I only know this that one of his sisters Juhi Begum was married to Humayun Kader deceased and that another sister of his was married to perhaps Suleman Mirza and his third sister was married to some body of Lucknow. Except Juhi Begum I do not know the name of any other sister of Syedali. I know the name of Juhi Begum for 16 or 17 years, because her husband Humayun Kader was my wife's paternal uncle. I do not remember who brought the pen and ink on the day I signed the Waknama. I did not carry them with me. I cannot say if others signed it with their own pen and ink. But so far as I remember there were only one pen and inkpot there. I do not remember anything about other signatories. For the last 6 or 7 years I am getting pension of Rs. 500 a month. On the death of my father pension of Rs. 75 or Rs. 100 a month was awarded to me. My sister living at premises No. 8 Marsden Street is older than me. I am not indebted to her. I am indebted to (1) Mir Syed Hussain of Lucknow for Rs. 14,000 due on two bonds of 1928 and 1930 carrying interest at 14 annas per cent per month, (2) Lal Giridhari Lal Banker for Rs. 8,000 due on a bond of 1933 bearing interest at 1 per cent per month, and (3) another Giridhari Lal of Chak Lucknow for Rs. 5,500 due on a bond of 1933 bearing interest at 12 annas per cent per month.

Cross-examination for plaintiff No. 2.

Cross-examined by pleader for plaintiff No. 2:—I know English a little. I was an Honorary Magistrate but I had not to write out judgment. I used to sit with another Magistrate who wrote judgments. It is not true that without reading the judgments I signed them. Dr. Adyanath Chatterji, Mr. Munsepdawla, Mr. Walace used to sit with me in the bench. The latter sat with me once or twice. I used to read such judgments but the portions I

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could not read were read over to me by any colleague. My father died in 1917. I was 5 or 6 years old then. My father died (left ?) four children when he died. Of those children three were sons and one was daughter. I am his 2nd son. His first child was my sister. He left only one widow. My sister was 12 or 13 years old when my father died. Since the dawn of my knowledge I have seen Husain Askari in our house. He acted as my guardian and not a legal guardian appointed by Court. He was my tutor also. I had great respect for him. I have two uncles I cannot say how many uncles I had in 1917. I had acquaintance with all my uncles who were alive in 1917. Prince Asmaja was one of my uncles. I knew him. I do not know when he died. Prince Jamja Ali was also my uncle. I do not remember when and how long ago he died. I do not remember if I ever went to the residence of my uncle Asmaja. When I saluted him he used to return my salute recognising me as his nephew. I cannot say where I resided then whether at house No. 8 Marsden Street or at Metiaburz. My father died when he was 34 or 35 years old. I do not know how many wives and children were left by Asmaja when he died. On 22nd April, 1935 I came from Lucknow at the request of Syed Muhammad Askari. The latter lives with his uncle Nawab Munsafdawla—whenever I go to Lucknow alone I put up in the house of Abu Saheb. When I take my family I engage a house there. My marriage took place in August 1918. My wife is dead. I am a widower. I have three children. Husain Askari died at Lucknow while he was living with me in 1926. I knew the name of Saheba Khatun. I do not know if Syedali brought a suit against Saheba Khatun in respect of the G. P. Notes of Prince Kamar Kader. I do not know what was the amount of debt due by Prince Kamar Kader. It is not true that consultations with eminent lawyers took place with a view to prepare a document to defeat the claims of latter's creditors. I do not know whether dispute was going on between Kamar Kader and Amir Begum over latter's claim for dower. I do not know whether Amir Begum demanded her dower from Prince Kamar Kader. I cannot say how old in 1916 and 1917 Husain Askari was. I do not know if he gave evidence in the case brought by Syedali against Saheba Khatun or if he deposed for the latter. I cannot deny if his age was 73 in 1923 as alleged to have been stated by him in his deposition in that case. Mufti Altap Hosain's house is opposite my house, with a road intervening. It is absolutely false that Husain Askari took my and Altap Hosain's signatures on the Wakfnama at Metiaburz. Humayun Kader was son-in-law of Prince Kamar Kader. He was alive in 1917. Suleman Mirza was another son-in-law of Kamar Kader. He is still alive. Humayun Kader lived at Metiabruz. Soleman Mirza lived in Calcutta. I know Jani Mirza. He is now present in this Court room. He is husband of Syedali's wife's sister. My age in 1917 was 25 or 26 years. I cannot say whether Prince Kamar Kader was 74 or 75 years old then. It does not appear from the Wakfnama where I lived when I signed it as an attesting witness and when I signed it. The addresses and date are also not written against the signatures of other attesting witnesses in the deed. I cannot say the dimensions of the room

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Evidence for defendants Nos. 3 & 4.

No. 62. Safdarjah Zahid Ali Mirza, witness No. 10.

in Jamutala Koti where the deed was signed I do not know that Saheba Khatun gave birth to a son born out of the loins of Prince Kamar Kader in 1917. I do not know if Syedali brought a suit against her and Kamar Kader for a declaration that that child was not son of Kamar Kader. I do not know what was the amount of dower claimed by Amir Begum. Some said that Saheba Khatun was the concubine of the Prince Kamar Kader. Some called her as his wife. But I do not know if it was true. I do not remember if Mr. Remfry obtained a decree against Kamar Kader. I know that Prince Babar, Prince Ibrahim Ali, Prince Askari and Prince Dilawar Jah obtained a decree against Kamar Kader for the administration of the Estate of Muhammad Ali or Masud Ali. I cannot say if that decretal amount was paid by the Prince Kamar Kader in 1917. But the amount was paid. I do not know that Prince Kamar Kader was declared by District Judge of 24-Parganas as an insolvent in 1918. I do not know the times when Husain Askari went to him. I had been to premises No 11 Rango Lal Street 5 or 6 times during my life time. For the first time I went there in 1915 or 1916 with my uncle Sultan Mirza. Prince Kamar Kader lived there then with females but I do not know who they were and how many they were. I do not know whether Amir Begum lived there then or not. I do not know if Prince Kamar Kader lived there with Saheba Khatun alone in 1915 or 1916. I have other incomes besides my political pension *viz.* (1) the income of Rs. 2,000 a year derived from two motor buses here (2) a jagir at Lucknow yielding an annual income of Rs. 3,000—I pay Rs. 34 as income tax on the income derived from buses. The jagir is free from income tax. It belonged to my wife. I have got a share in it by inheritance. The income in my share of the jagir is what I have stated. The income in my son's share is Rs. 9,000. I know my uncle Prince Akram Hosain. He lives at Ballygunge which is about 2 miles off from my place. He was once Sherif of Calcutta. I do not remember the year. So far as I know, he never lived at Metiabruz. Prince Raza Ali all along lived in a rented house. He had no immovable property. I knew Prince Dilawar Jah and Prince Ibrahim Ali. They had no property other than their houses occupied by them, so far as I know. Prince Baber was a respectable member of Oudh family and was alive in 1917. I knew Mir Khadum Hosain. He was a Tasilder in respect of Bengali Bazar appertaining to the Wakf Estate of Her Highness Nawab Begum of Murshidabad. I do not know if he used to look after other person's law suits or if he worked as a tout. Kana Medi was the Manager of Humayun Kader's Estate. I do not know if Saheba Khatun said anything to Prince Kamar Kader about the Wakfnama or what she said to him in regard to it. She never appeared before me and I did not appear before her. So I am not aware of the conversation they had in the room. Achhan was a servant of Kamar Kader. I do not know where he used to serve him whether at 11 Rango Lal Street or at 123, Circular Garden Reach Road. It is not true that he was a servant of Saheba Khatun. I did not see him do any work of Kamar Kader. He came to call me. This I saw. So far as I know, Prince Kamar Kader all along lived at Khiderpore. I do not

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know in which year Husain Askari became acquainted with Prince Kamar Kader. My father was born at Metiaburz.

N. B. Banerjee,
Offg. Sub-Judge.
1-5-35.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 62. Safdarjah Zahid Ali Mirza, witness No. 10.

10 Safdarjah Zahid Ali Mirza.

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No. 63.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 305-309—Deposition of Suleman Khan, witness No. 11 for defendants Nos. 3 and 4, dated the 1st and 2nd May, 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 63. Suleman Khan, witness No. 11.

Deposition of witness No. 11 for defendants 3 and 4 taken on solemn affirmation on the 1st day of May, 1935, before Babu Nikunja Behary Banerjee 3rd Additional Sub-Judge of Alipore.

My name is Suleman Khan son of Ismail Khan, by caste——. My age is 56 years. I reside at 2, Bhukailash Road, District 24-Parganas. My occupation Trading.

Examination.

I live in premises No. 2, Bhukailash Road The land occupied by me appertains to Wakf Estate. It is 14 cottas in three plots. Its rent is Rs. 18 per month. Its tax is Rs. 25-7-6ps. per quarter. I have got rent and tax receipts. Witness hands over some receipts to the pleader. I got them on payment of rents and taxes. Before me my father-in-law Asgar Serang was the tenant. I am literate. The receipts stand in the name of Asgar Serang and in my name as Marfatdar. I brought the receipts on payment of rents. I used to pay rents to Saheba Khatun through Kisori Babu as she was Ejaradar of the Estate. After the Ejara lease the Wakf was created. Kisori Babu wrote and signed the rent receipts. I know his handwriting. They bear the mark of seal of Saheba Khatun. The receipts are marked Exts. N(42) to N(45). After Kisori Babu I paid rent to Kayem Hosain Gomosta of Saheba Khatun and got two receipts. They were written and signed by him. I know his handwriting. The receipts are marked Exts. N(46) and N(47). I next paid rents to Makram Ali Tasildar of Wakf Estate and got receipts written and signed by him. I know his handwriting. The receipts are marked Exts. N(48) and N(49). I filled up 4 tanks on contract with Kamar Kader in 1916. The Wakf was created in 1917. I heard of his intention to create it from Prince Kamar Kader in December, 1916. He again informed me in February, 1917 of his desire to create a Wakf of his premises No. 123, Circular Garden Reach Road. In August, 1917 he informed me of the creation of the Wakf and of the construction of Nuhara and Minerates, Mosque and Imambara. I am still a tenant in occupation.

Cross-examination.

Cross examined by pleader for plaintiff No. 2:—I keep a shop of perfumery at premises No. 138, Circular Garden Reach Road in Khidderpore.

N. B. Banerji,
Offg. Sub-Judge.
1-5-35.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 63. Suleman Khan, witness No. 11.

Further cross-examined:—The shop exists since 1929. I have been a partner of the shop since 1931. I was a Ticcadar under Port Commissioner for 10 years before that. Before that I used to supervise the work of masons and labourers for 10 or 12 years. Before that I worked in a Jute Mill at Muchikhola for 1½ years. Before that I worked as a Draftsman for 6 months in B. N. R. Office. I do not remember when I lost that service. I entered that service in March. Before that I served under Hari Mohan Ghosh at Fatepur. My wife is alive. She is my only wife. I have three daughters. My father-in-law Asgar Serang died in February, 1925 leaving three daughters. I was married in 1914. I was born in Calcutta. My father was a man of Berilli State. I cannot say what was the native place of Asgar Serang. I had house when I was married. My father died in 1911 before my marriage. I was 36 years old when I was married. I then served under Ramnaran. I served under him for 7 years. I began to live on my father-in-law's land in 1911. I took a lease of 2 cottas of land from him at a rent of 8 annas per month. I got no Dakhilas from him. There was no Patta or Kabuliat. There may be papers to show my tenancy but I have not brought them. I do not know when Asgar Serang took settlement. I got no papers from him about his settlement. I have seen Saheba Khatun. She told me about the Ejara lease in January, 1916. I do not remember the date when I went to receive money she told me. She paid me Rs. 19 on that day as cart hire including the price of 19 carts loads of cinders. I had an account to show it. It does not exist now. Before that day I got Rs. 13 and before that Rs. 7 on similar accounts from her. I commenced the work of filling the tank on 13th January, 1916. It continued up to March, 1917. I had no acquaintance with Kisori Babu. I do not remember when I paid him rent first or last. I knew Kayem Hosain. I do not remember when I paid him rent first or last. I paid rent first to Makram Ali in 1923 but I do not remember the month. I paid him rent last in February, 1935. The receipts Exts. N(42) to N(45), N(47) do not bear my name as Marfatdar. Ext. N(48) was written and signed by Makram Ali. After the death of my father-in-law no new settlement was taken but rent has been enhanced. Formerly rent for 3 plots was Rs. 7. It was enhanced to Rs. 18 per month in 1927. The receipts granted from 1927 are not filed by me. Witness shows two receipts for 1933. One showing payment of rent at the enhanced rate and another for taxes. Under order of Prince Kamar Kader his maid-servant Kadiran used to pay me money for filling up the tank in 1916 and 1917. I received such payments at premises No. 11, Rangolal Street where the Prince lived with Saheba Khatun. After March, 1917 I used to go there occasionally when I was sent for by Prince Kamar Kader and when I went there for payment of rent. I went there twice or thrice on his call. I went there 5 or 6 times in 1917 to pay my rents. I paid Rs. 12 as rent first in 13th February, 1917. Next I paid Rs. 13½ as rent. I do not remember how much rent I paid for the third time or fifth or sixth time. I paid Rs. 3 as rent for the fourth time. I do not remember the dates of such payments made to Kisori Babu from the 2nd to sixth times. I do not remember the dates of Prince's calls through his Durwan Gayadin. I cannot say if the latter

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then lived at premises No. 11, Rangolal Street. When Prince lived with Saheba Khatun at premises No. 11, Rangolal Street Prince's son Syedali lived with his family at premises No. 123, Circular Garden Reach Road. I have not seen Prince Kamar Kader take cocaine. I cannot say if he had with him cocaine file and a spoon. He did not drink wine. I cannot say if he took opium. Abinash Babu pleader, Moulvi Reazuddin, Babulal, Kisori Babu and Jafar Khan Durwan who stood outside were present when Prince Kamar Kader expressed his desire before me to create a Wakf. I cannot say if they are alive. I have not seen any of them since then. I was not present when the Ejara lease was written and executed. I have heard of it. I was not present when the Wakfnama was executed. I cannot say even by guess how many times I deposed in Courts. I have received no summons. I have come here at request of Makram Ali who told me that my summons was in Court. He did not tell me to bring the Dakhilas. I have brought them of my own accord. I have not yet received any travelling expenses although offered to me. A person injures his character if he is in need. As I am not in want I have come here without taking any travelling cost.

N. B. Banerjee,
Offg. Sub-Judge.
2-5-35.

Read over, interpreted and admitted to be correct.

S. De.,
B. C.,
2-5-35.

Solaiman Khan.

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No. 64.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 310-313—*Deposition of Sudhanshu Bhushan Mukherjee, witness No.* 12 *for defendants Nos.* 3 *and* 4, *dated the* 2*nd May*, 1934.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 64. Sudhanshu Bhushan Mukherjee, witness No. 12.

Deposition of witness No. 12 for the defendants 3 and 4 taken on solemn affirmation on the 2nd day of May, 1935, before Babu Nikunja Behary Banerji 3rd Addl. Sub-Judge of Alipore.

Examination.

My name is Sudhanshu Bhushan Mukherji, son of late Nafar Ch. Mukherji My age is 29 years. I reside at 28 Ram Kamal Street, District 24-Parganas, where I am a physician.

I knew Prince Kamar Kader. He is dead. My father took settlement of about 3 cottas of land from him by a registered Patta and Kabuliat. Charu Chandra Sarkar wrote the Kabuliat. My father signed it in my presence. Witness identifies his father's signature. It is marked Ext. K. My father got a patta. Witness hands over the Patta to the pleader. Charu Chandra Sarkar and the Prince Kamar Kader signed the Patta in my presence. Proves Patta Ext. S. My father died 5 years ago. I hold the land of the Patta. I paid rents and got my Dakhilas. Some of them are brought by me. Old Dakhilas are destroyed. The 1st two Dakhilas are written and signed by Kisori Babu and the 3rd Dakhila is written and signed by Munshi Makramali. I know their handwriting. The Dakhilas are marked Exts. N(50) to N(52). They relate to land at No. 28 Ram Kamal (Mukherji) Street. My father had to pay Rs. 50 as selami for the lease. He was a Kabiraj. I am also a Kabiraj.

Cross-examination.

Cross-examined:—I have been practising as a Kabiraj for 13 years. Before that I read in Astanga Aurbed Bidyalay for 4 years. I left school in 1917 after reading up to 1st class. I got plucked in Matriculation Examination. I am the elder of two brothers. My father died in 1936. He used to look after his properties and pay rents. I used to assit him when he was attacked with carbuncle and paralysis. The Patta and Kabuliyat were executed before that attack. Before paralysis he used to look after his affairs himself. I was present when the Patta was signed by Prince Kamar Kader and was registered at premises No. 11 Garbari Street. It was signed in the morning in the presence of Kisori Babu, Charu Sarkar, my father and myself. I accompanied my father there and found Babu Abinash Chandra Pal pleader for the prince and the latter present there. The Patta was then

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 64. Sudhanshu Bhushan Mukherjee, witness No. 12.

with Abinash Babu. The letter read it over to the Prince. I do not remember what took place after it was read over to him. Brindaban Chandra Mondal and Jadunath Mondal, Prince Kamar Kader and his wife Saheba Khatun signed it. The latter signed in the room behind a Purda. Kisori Babu also signed it. I do not remember if Abinash Chandra Pal pleader signed it. Seeing the patta witness says that the latter did not sign it and it does not show that it was read over by any body to the executants. On the very date of its execution the Sub-Registrar came there. The Kabuliat and Patta were executed on the same date Charu Sarkar wrote the Patta and Kabuliat at his house in my absence and brought them at the Prince's place. My father at first signed the Kakuliat it the morning and took it to the registry office for its regstration hut I did not accompany him there. He brought the Sub Registrar to the prince's house in the afternoon. In their presence the Prince and Saheba Khatun signed the Patta. The Patta was then registered. I cannot say if the Kabuliat was registered in the registry office. I went to the Prince's house in the morning and left it at about 10 A. M. for our house on that day. I again went there at about 3-0 P. M. and was loitering in its vicinity and entered the house at 4-30 P M after the arrival of the Sub-Registrar with my father. Dakhilas Exts. N(50) and N(51) are old. As Saheba Khatun signed the Patta behind the Purda I think that she was in the room behind the Purda when the Patta was read over. The Patta was not separately read over to her I cannot say in which I paid rent first during my father's life-time. I paid rents up to 1917 and 1918 during my father's life time. I paid rents to Kisori Babu many times. I cannot say in which years Kisori Babu is dead. I cannot say the year of his death. After him I paid rents to Kayem Hosain. I cannot say how many times. Rents for about two years are in arrears. I saw Kamar Kader with his eldest son Nawab Syedali at premises No. 11 Garbari Road 3 or 4 years before the date of the patta when I went there to pay my rent. I cannot say whether other members of his family lived there or not at that time. I went there with Rs. 14-12 annas on account of rent. I do not remember how many days before that I went there for payment of rent. My father held no other land than that covered by the Patta, under Prince Kamar Kader. I do not know if Kamar Kader was addicted to cocaine.

Re-examination.

Re-examined:—I cannot say if Abinash Chandra Pal, Pleader is alive.

N. B. Banerjee,
Offg. Sub-Judge.
2-5-35.

Sudhansu Bhuson Mukherjee.

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No. 65.

Nos. 314-315—*Deposition of Sundar Ali, witness No.* 13 *for defendants Nos.* 3 *and* 4, *dated the* 2*nd May*, 1935.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 65. Sundar Ali, witness No. 13.

T. S. Nos. 1 and 2 of 1934.

Deposition of witness No. 13 for the defendants 3 and 4 taken on solemn affirmation on the 2nd day of May, 1935, before Babu Nikunja Behary Banerji, 3rd Addl. Sub-Judge of Alipore.

Examination.

My name is Maulvi Sunder Ali, son of Ramizuddin Ahammad by caste ———. My age is 40 years. I reside at 7 Ekbalpore Road, Pargana——— District 24-Parganas. My occupation is teachership.

I knew Prince Kamar Kader. I hold one cotta of land of the Wakf estate. My father in-law Moulvi Abdul Aziz holds ½ cotta of land of that estate. I executed a Kabuliat. It was registered. An Amla of Wakf estate wrote it. I signed it myself. I am literate. This is the Kabuliat bearing my signature. Seeing it witness says that Muhamad Nurul Huq Chowdhury wrote it. The kabuliat is marked Ext. K(2). I paid rents at Rs. 2 and got dakhilas. Witness produces some dakhilas to the pleader. They relate to my land at No. 7/1 Ekbalpur Road. They were written and signed by Makramali. I know his handwriting. They are marked Exts. N(53) to N(59). My father-in-law died in 1929 March. I paid the amount of a decree for arrears of his rent and got a receipt. This receipt is written by Markramali. It is marked Ext. N(60). I possess my father-in-law's life(*sic*) on behalf of my wife as his heir. My wife died in 1934. I am a school master and Naib Kazi or Assistant Registrar of marriages. I do the work of a school master for about 35 years.

Cross-examination.

Cross-examined by pleader for plaintiff No. 2:—The Kabuliat was written in the office of the Wakf estate according to the advice of its Amla and manager. I have constructed my dwelling house on tbe land covered by my kabuliat. I hold my Pathsala there. My father-in-law died when he was 80 years old. I have seen him possess his ½ cotta land since my boyhood. My present age is 40 years. I do not remember whon or in which month and year he paid rent last. I accompanied him many times. I do not remember in which year I accompanied him last before his death. I do not remember if it was 3 or 4 years ago. My rents are in arrears for 2 or 3 years. I have other Dakhilas which are not brought. My father-in-law had his Dakhilas. They were with my wife. I have not yet searched them all. I am summoned

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 75. Sundar Ali, witness No. 13.

to produce Dakhilas but all my Dakhilas are not brought by me. I have brought those Dakhilas I found on search. I received summons in March 1935 but I cannot say the date.

N. B. Banerji,
Offg. Sub-Judge.
2-5-35.

Sundar Ali.

The witness after perusal of his deposition corrects himself by saying that he worked as school master for 25 years and not for 35 years as stated by him before.

N. B. Banerjee,
Offg. Sub-Judge.
2-5-35.

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No. 66.

In the Cour of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 316-317.—*Deposition of Pramatha Nath Paul, witness No.* 14 *for defendants Nos.* 3 *and* 4, *dated the* 2*nd May*, 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for defendants Nos. 3 & 4.

Deposition of witness No. 14 for the defendants 3 and 4 taken on solemn affirmation on the 2nd day of May, 1935, before Babu Nikunjo Behary Banerjee, 3rd Addl. Sub-Judge, Alipore.

No. 66. Pramatha Nath Paul, witness No. 14.

My name is Pramatha Nath Paul, son of Priya Nath Paul. My age is 52 years. I reside at 120/1, Circular Garden Reach Road, District 24-Perganas. My occupation is—Trader.

Examination.

My father is alive and is now 85 or 90 years old. He is an invalid. I knew Prince Kamar Kader of Khiderdore. My father holds about 2 cottas of land at No. 120/1, Circular Garden Reach Road under him for 28 or 29 years. Its rent was formerly Rs. 5 per month. It was enhanced to Rs. 8, 5 or 6 years ago. I paid rents on my father's behalf as Sarbarahakar and got Dakhilas. Two Dakhilas are brought by me. Witness hands them over to the pleader. They are written and signed by Munshi Makramali. I know his handwriting are marked Exts. N(61) and N(62). Other Dakhilas are lost. Prince Kamar Kader used to get rents from us. Then there was the lease granted to Saheba Khatun. Then the Prince created the property Debattar. After his death I paid rents to his son Syedali. I know Shaik Ujir Ali. He occupies a plot of land west of my father's land as a tenant of the Debattar Estate.

Cross-examination.

Cross-examined by pleader for plaintiff No. 2:—I have not received summons but it is said to be in Court. I have come here at the request of Makramali. The Zeminder asked me to bring Dakhilas. I found the two Dakhilas after search. Other Dakhilas are not found out by search. They are not destroyed. I have no papers besides these two Dakhilas now to show our possession of the land before 1927 or its rent as Rs. 5 formerly. I have heard of the lease in favour of Saheba Khatun and of Kamar Kader creating a Debattar. I cannot say what amount of rent is paid by Ujir Ali.

N. B. Banerjee,
Offg. Sub-Judge.
2-5-35.

Read over, interpreted and admitted to be correct.

S. De,
B C.
2-5-25.

Pramatha Nath Paul.

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No. 67.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 318-319.—*Deposition of Abdul Barik, witness No.* 15 *for defendants Nos.* 3 *and* 4, *dated the* 2*nd May,* 1935.

Title Suits Nos. 1 & 2 of 1934.

T. S. Nos. 1 and 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 67. Abdul Barik, witness No. 15.

Deposition of witness No. 15 for the defendants 3 and 4 taken on solemn affirmation on the 2nd day of May, 1935, before Babu Nikunjo Behary Banerjee, 3rd Addl. Sub-Judge of Alipore.

Examination.

My name is Abdul Barik, son of Rahim Bux. My age is 50 years. I reside at 3, Ekbalpore Road, District 24-Parganas. My occupation is service.

I knew Prince Kamar Kader. My aunt Fatoo Bewa (sister of my father) holds 3 cottas of land under him for 25 or 26 years. Its rent was Rs. 3-12 annas formerly per year. It is Rs. 3 per month now. It is at No. 3 Ekbalpur Road. Hingu Butler was husband of Fatoo Bewa. He died about 23 or 24 years ago. He also lived on this land. On his death his widow Fatoo Bewa possesses it. She lives with me there. She paid its rents and got Dakhilas. Witness produces some Dakhilas. I am illiterate. The land appertains to Wakf Estate. I came to know it when Prince Kamar Kader gave it out 1 or 1½ years before his death that he created a Wakf of his property by making a mosque and an Imambara. I have seen the mosque at his premises No. 123, Circular Garden Reach Road when I went there to pay rent. I also saw an Imambara and procession come out from that house to house No. 11 Rango Lal Street and return from there on 2nd and 7th days of the Muharrum and on the 10th day the procession goes to Metiaburz. In the Imambara Majlises are held and Mersias are read and Alams and Tazias are kept.

Cross-examination.

Cross-examined by pleader for plaintiff No. 2:—I did not receive any summons. I cannot say the year of death of Prince Kamar Kader. I heard of the creation of the Wakf by him from my aunt and other Ryots. I work as a crew in a ship. I have to remain abroad sometimes for 6 or 8 or 12 months and sometimes for more than a year. I remain at home for 2, 3 or 6 or more months. I have seen the completed mosque at premises No. 123, Circular Garden Reach Road. It is visible from that road when its gate is open. I have seen its existence for 14 or 15 years. Before that I did not go to the land of that premises. I saw Mersia read there 20 or 25 years ago. I similarly saw processions for 20 or 25 years when I came home. I am now

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 67. Abdul Barik, witness No. 15.

out of employment for 5 or 6 months. I was asked by Munshi Makramali to bring our Dakhilas.

N. B. Banerjee,
Offg. Sub-Judge.
2-5-35.

Read over, interpreted and admitted to be correct.

S. De.,
B. C.
2-5-35.

(Thumb-impression).

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No. 68.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 320-321.—*Deposition of Habibar Rahaman, witness No.* 16 *for defendants Nos.* 3 *and* 4, *dated the* 2*nd May*, 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 68. Habibar Rahaman, witness No. 16.

Deposition of witness No. 16 for the defendants 3 and 4 taken on solemn affirmation on the 2nd day of May, 1935, before Babu Nikunjo Behary Banerjee, 3rd Addl. Sub-Judge of Alipore.

Examination.

My name is Habibar Rahaman, son of Matiar Rahaman. My age is 47 years. I reside at 12/1, Kailasarak Road, District 24-Parganas, where I am a Pensioner.

Nuri Hajini is my mother's sister. She held 2 cottas of land as a tenant under Prince Kamar Kader 8 or 9 years ago at a monthly rent of Rs. 1½. She had a thatched dwelling hut there. That hut was sold to Faijan Bewa. She lived there from before my birth. My present age is 47 years. She paid rents to Jnan Babu Manager of Prince Kamar Kader and afterwards to Kisori Babu and Kayem Hosain his Amlas till sale. Some of her Dakhilas were filed by us in that suit brought against Mr. Moris by the Prince. Other Dakhilas were thrown away. My aunt Nuri Hajini was a party to that suit. I looked after the suit on her behalf. Prince Kamar Kader obtained a decree in that title suit. The property at first belonged to him. He afterwards made it Wakf.

Cross-examination.

Cross-examined by pleader for plaintiff No. 2:—I am now out of employment. Nuri Hajini is dead. I have no papers to show her possession of the land. All the papers I had were handed over to the purchaser. Nuri Hajini sold her property to Faijan Bewa. She made over 8 or 10 Dakhilas, 1 Patta and 1 Kabuliat to her. The suit against Mr. Moris was instituted in 1st or 2nd Sub-Judge's Court at Alipore. I filed some Dakhilas on behalf of my aunt in that suit in 1917 or 1918. I paid rents to Jnan Babu up to 1914 or 1915 and Kisori Babu up to 1920 or 1921 or 1922 and to Kayem Hosain for 6 or 12 months. Nuri Hajini sold her hut in 1923 probably. The suit against Mr. Moris was decreed about 4 or 5 years ago. Nuri Hajini died in 1932. In 1917 or 1918 I heard of the Wakf created by Prince Kamar Kader, when I went to pay him rent. I heard of it also before that from other tenants. I paid rent to Kisori Babu then. Many men of Prince's side were present then. I do not remember their number. I heard of it at premises No. 123, Circular Garden Reach Road. I sometimes paid rents to

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 68. Habibar Rahaman, witness No. 15.

Kisori Babu in the office at that premises. Sometimes he realised it by bills. I received summons about a month ago. I have known Makramali for about 11 or 12 years when he joined the Wakf Estate. I was born at Noakhali. I came to Calcutta when I was 4 years old. Since then I have been residing in Calcutta. I formerly worked in the godown of Port Commissioners. I retired from that service 4 years ago. I cannot say if Makramali was in jail.

N. B. Banerji,
Offg. Sub-Judge.
2-5-35.

Habibur Rahaman.

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No. 69.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 322-328—Deposition of Mirza Md. Abedali witness No. 17 for defendants Nos. 3 and 4, dated the 3rd May, 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 69. Mirza Md. Abedali, witness No. 17.

Deposition of witness No. 17 for the defendants 3 and 4 taken on solemn affirmation on the 3rd day of May 1935, before Babu Nikunja Behary Banerji, 3rd Addl. Sub Judge of Alipore.

Examination.

My name is Mirza Md. Abedali, son of Prince Mirza Md. Ibrahim Ali Bahadur. My age is 40 years. I reside at Garden Reach Road, Matiaburz, District 24-Parganas, where I am a political pensioner.

My father was a son of the Ex King of Oudh. I receive a political pension of Rs. 500 per month. I knew Prince Kamar Kader who was my eldest uncle. I know that he created a Wakf by a registered deed. A Wakfnama was executed by him in my presence. It was written by Amjad Ali. I signed it as an attesting witness. Other attesting witnesses signed it in my presence. Those who were present signed it in my presence. Subder Jah, Mukti Saheb, Prince Sultan Mirza, Prince Dilawar Jah, my father Prince Ibrahim Ali, Syed Ali Humayun, Amjad Ali, Syed Hossain Askari were present there. They all signed. Admits his signature Ext. Q(1) and his father's signature Ext. Q in Ext. R. Witness identifies the signature Ext. Q(25) of Dilwar Jah and the signature Ext. Q(2) of Prince Kamar Kader. The Wakfnama Ext. R contains many other signatures of Prince Kamar Kader. Witness identifies them including Ext. Q(27). All these signatures were made in my presence. Prince Kamar Kader was in sound state of body and mind at the time of execution of the Wakfnama. He executed the Wakfnama out of his own free-will, who could have any influence over him? My father and he used to visit each other. I know premises No. 123 Circular Garden Reach Road as my uncle Prince Kamar Kader used to reside in it. I have often seen him there when I went there with my father. There was a change in the premises after the Wakf. It was converted into a mosque and an Imambara. Majlises took place in the Imambara and prayers were said in the mosque. I have seen people say their prayers in the mosque. I have attended Majlises in the Imambara.

Cross-examination for plaintiffs Nos. 1 and 1(a).

Cross-examined by Counsel for plaintiffs Nos. 1 and 1(a):—I do not remember the year of my birth. I did not know it. My father died in 1920. I do not remember how old I was when he died. I never attended a school. I read Urdu at home. Moulvi Murtaza Hossain was my private

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tutor. After the death of my father I gave up my studies. I do not remember how old I was when I commenced study. I do not remember how old I was when I signed the Wakfnama. The(*sic*) was signed at premises No. 11 Jamutala or Rangolal Street. I went there with my father. Prince Kamar Kader sent for my father and not me. I do not remember whether he had sent any letter to my father asking him to come. I say that my father was sent for because he went there. My father told me where he was going when he took me with him. The Wakfnama was not written in my presence. It was not registered in my presence. My father and I reached the place at 2 or 2-30 P. M. We went there on a hired conveyance I do not remember how we kept that conveyance in waiting. We returned to our place at 8 or 8-30 P. M. *via* Calcutta. My father paid the hire of the conveyance. I do not remember the amount paid by him. It was not paid by the Prince. The work relating to the deed was completed by 3 or 3 30 P M. At 3 or 3-30 P. M, we left that premises for Calcutta to make some purchases We did not visit any friend or relation of ours. When we left premises No. 11 Rangolal Street other signatories also left it. I do not remember if Prince Kamar Kader also went then to premises No. 123 Circular Garden Reach Road. But his conveyance was ready to take him out. When he left the place Prince Kamar Kader was there. I do not remember if my father and I left the place last of all. After the completion of the deed the Prince announced that he was going out. We left and the persons who assembled were also leaving the place one after another. I cannot say which of them left first or last. The work relating to the Wakfnama commenced about half an hour after arrival of my father with me. On arrival we found Mukti(?) Saheb and Amjadali there. Others came there afterwards The work was not commenced until all the signatories had arrived. The first work done was that the deed of Wakf was read out. I do not remember who read it out. The person who read it out did so of his own accord. I do not remember how long it took to read it. I heard what was read. I remember some portion of the deed. I remember only this much that the prince Kamar Kader was to be the first Mutwali and that after him Mirza Syedali his son would be the Mutwali and after him all his heirs would be Mutwallis, I do not remember anything else. Prince Kamar Kader signed the deed first. After him attesting witnesses signed it. I cannot say which of them signed first or last. I do not remember after whose signature I put mine or who signed immediately after me. None waited after the signatures were put. I do not remember when I met Prince Kamar Kader before the date of my signing the deed. I met him again 4 or 5 months after that date. I remember it as it was on the occasion of next Muharrum when I went there to attend the Majlis. I do not remember whether Majlis used to be held at the place of the Prince before I signed the deed. I do not know in which house Prince Kamar Kader used to live at the time when the Wakfnama was signed. I did not attend the Majlises of the 2nd Muharrum after the Wakf. I do not remember to have attended Majlises of any other Muharrum after that. I only joined the funeral of Prince Kamar Kader at the Shahi Imambara when the last prayer for the dead was offered at the burial service.

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I did not attend his funeral ceremony at his house. I did not see him during his last illness because my father was ill. Pen and ink-pot with which the signatures were made in the Wakfnama were there at the time of signatures. I do not remember whether the pen was English or Indian *i. e.* whether it was with an iron rib or whether it was a reed pen. I do not remember whether the ink was English blue-black or Indian. I signed with the same ink and pen found there but I cannot say whether others signed with them. Seeing pages 11, 19 to 22 of the Wakfnama Ext R, witness says that they bear no signature. Seeing page 10 witness says that it bears the words Kamar Kader at the bottom of that page. Subdar Jah is my cousin. Prince Kamar Kader signed only once in the last page No. 24 where other witnesses signed in my presence. His other signatures on other pages were not put down in my presence. I do not remember how many paternal uncles I had. I also do not remember how many of them were alive on the date of execution of the Wakfnama Ext. R. I do not remember how many of them were alive on the date of death of Kamar Kader or of my father. All of my uncles used to visit my father. My memory is good but how can I remember them ? It is not true that my uncles were on bad terms with each other and did not meet each other. I do not know that my father and Prince Baber with some other princes had sued Prince Kamar Kader in the High Court of Calcutta I had an uncle Prince Mirza Muhammad Ali. I do not know that he died childless. I do not know that my father was one of his heirs and some of his assets came into the hands of Prince Kamar Kadar. I do not know that in respect of such assets my father and Prince Baber and others had sued him. I do not know if Prince Kamar Kader was attacked with Paralysis during the pendency of that suit and that the suit had been adjourned on that ground I do not know Saheba Khatun I have heard of her name. I never came to know of any connection between her and Prince Kamar Kader. I do not know if Saheba Khatun lived at premises No 11, Rangolal Street at the time of execution of the Wakfnama I cannot say in what connection I heard of her name. Prince Kamar Kader did not construct any new Mosque and Imambara. He converted the whole of his own dwelling house No. 123, Circular Garden Reach Road into a Mosque and an Imambara by the Wakfnama. I do not remember if there is any detail in the deed for separate allotment of the Mosque and the Imambara. I hold Majlises during Muharrum in my house. I also keep Zareeh and Alam in my house during Muharrum ; when Muharrum comes, I set apart a place for keeping Zareeh and Alam and for holding Majlis. I do not keep any Zareeh and Alam but the females keep them in my house. I do not hold my Majlises in every Muharrum. I do not remember if I held them in any year prior to the last Muharrum. I do not remember whether my brothers held Majlis in any year but they do sometimes hold a Majlis. My father often used to hold Majlises but not in every Muharrum. The females hold Majlises inside their houses in which they take part.

Cross-examined by pleader for plaintiff No. 2 :—I knew S. Husain Askari. He used to live with Subdar Jah at premises No. 8, Marsden Street. He was

Cross-examination for plaintiff No. 2.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

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No. 69. Mirza Md. Abedali, witness No. 17.

a tutor of my father and my uncle Dilawar Jah. It is not true that Husain Askari took the last page of the Wakfnama to our house and got the signatures of myself, my father and my uncle Dilawar Jah. I do not know if litigation was going on between my father and Prince Kamar Kader when my father signed the deed on its last page. My father was on good terms with Prince Kamar Kader as between brothers when he signed the deed. Husain Askari used to come to our house often. Mirza Syed Ali has left one son and two daughters. I cannot say whether they were born at premises No. 123, Circular Garden Reach Road. Syedali's widow is alive. I do not know how many wives Syedali had. I do not know where his one widow now lives. Prince Kamar Kader had only one wife. I did not see her. I do not remember in which year or where she died. Her name was possibly Amir Begum. I do not remember how many children Kamar Kader had. He died leaving a daughter and a son. I do not remember the year in which I with my father first saw him. I do not remember how old I was when I first met him. I first met him on the date of execution of the Wakfnama and again once only after that occasion. I had no talk with him when I put my signature on the deed.

N. B. Banerjee,
Offg. Sub-Judge.
3-5-35.

Mirza Mohammed Abid Ali.
3-5-35.

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No. 70.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 329-330—Deposition of Abdul Karim, witness No. 18 for defendants Nos. 3 and 4, dated the 3rd May, 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 70. Abdul Karim, witness No. 18.

Deposition of witness No. 18 for the defendants 3 and 4 taken on solemn affirmation on the 3rd day of May, 1935, before Babu Nikunjo Behary Banerjee, 3rd Additional Sub-Judge of Alipore.

My name is Abdul Karim son of Mahammad Jan, by caste——. My age is 28-30 years. I reside at No. 1, Dent Mission Road, Pargana———, District 24-Parganas. My occupation is Trading.

Examination.

I did not know Prince Kamar Kader. I knew his son Mirza Syedali. I live at premises No. 1, Dent Mission Road where I have a meat shop. The shop exists there for 30 or 35 years. It was my father's shop. My father died 8 or 9 years ago. I pay Rs. 12 as rent for the shop per month. Its rent was formerly Rs. 10. I paid its rents and got receipts. Witness produces some receipts. I paid rents to Kayem Hosain and after him to the present Munshiji. I am illiterate.

Cross-examination for plaintiff No. 2.

Cross-examined by pleader for plaintiff No. 2:—I did not know Amir Begum mother of Syedali but I knew his sister Juhi Begum. I do not know whom my father used to pay rent. I am a Ticca tenant. I have come here to-day at the request of Munshi Makram Ali. I have brought the rent receipts of my own accord. I expect to get nothing although I am absent from my shop for this day. I do not remember up to which year I have paid rents to Kayem Hosain.

Cross-examination for plaintiffs Nos. 1 and 1(a).

Cross-examined by counsel for plaintiffs Nos. 1 and 1(a):—Premises No. 1, Dent Mission Road is a Pucca house. I do not know if Prince Kamar Kader or Saheba Khatun lived in that house.

N. B. Banerjee,
Offg. Sub-Judge.
3-5-35.

Read over, interpreted and admitted to be correct.

S. De.,
B. C.
3-5-35.

Abdul Karim.

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No. 71.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 331-340—Deposition of Md. Kazim Shirazi, witness No. 19 for defendants Nos. 3 and 4, dated the 3rd and 4th May, 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 71. Md. Kazim Shirazi, witness No. 19.

Deposition of witness No. 19 for the defendants 3 and 4 taken on solemn affirmation on the 3rd day of May, 1935, before Babu Nikunjo Behary Banerji, 3rd Addl. Sub-Judge of Alipore.

Examination.

My name is Md. Kazim Shirazi son of late Haji Mahammad Jafar Shirazi. My age is 45 years. I reside at 10, Portuguese Church Street, District 24-Parganas, where I am a Mutowali of the Imambara and Wakf estate of late Aga Korbela Mahammad.

I am the grandson of late Haji Karbalai Muhammad and am a Mutwali of the Wakf estate created by him. Along with two others I am joint Mutwali. I am also a Mutwali of the Imambara Wakf estate of Bibi Analo. The Wakf of my grandfather is the biggest Wakf of the Shia community in Calcutta. The famous Calcutta processions on the 8th and 10th days of Muharrum are taken out of that Wakf estate. That Imambara is situated at 10 Portuguese Church Street, Calcutta. The whole premises is called Imambara. There are three floors in that premises. There are Imambara, and rooms where Majlises are held on the first floor. The rooms on the 2nd floor are used by Mutawalis as their quarters. There are Wakf godowns on the groundfloor. Besides these, there are servants' quarters, kitchens, bathrooms. I knew Prince Kamar Kader. My father's sister's daughters were married by his brothers Prince Khosbukt and Prince Sultan Mirza. My father was Marriage Registrar for Calcutta and Garden Reach. All the princes used to come to him in connection with marriages. I am aware of the big Wakf created by Prince Kamar Kader of all his properties for the maintenance of a mosque and an Imambara. I came to know of it before and after creation of the Wakf. Before the creation of the Wakf some one else or he himself came to the office of our Wakf estate and wanted a copy of the scheme framed by the Hon'ble High Court in respect of our Wakf and a copy of the Will made by my grandfather saying that these would help him in preparing his own Wakfnama. After the Wakf I came to know of it when Prince Kamar Kader who usually attended processions held on the 8th day of Muharrum announced that he had created a Wakf and that people might take part in the ceremonies of this Muharrum. I attended the Majlis held at premises No. 123 Circular Garden Reach Road in 1918 on the occasion of 2nd Muharrum

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 71. Md. Kazim Shirazi, witness No. 19.

Cross-examination for plaintiffs Nos. 1 and 1(a).

from the date of the Wakf and found a mosque and an Imambara there and said my prayers in the mosque. I say my prayers in that Shia mosque even now when there is necessity. I attended ten Majlises during Muharrum held in respect of this Wakf.

Cross-examined by counsel of Plaintiffs Nos. 1 *and* 1(*a*) :—The mosque is on the left hand side after entering the gate of premises No. 123, Circular Garden Reach Road. Imambara is on the right hand side. Formerly there was something like a dome on the left side of the gate. I cannot say whether the dome still exists there. Besides this there is no appearance of a mosque from outside. But when the doors remain opened the Mehrabs and other arrangements of the mosque inside the room are visible from outside. I did not notice the Mehrabs when I first went to the premises after the Wakf as it was 11 P.M. in the night when the Majlis was held and the door of the mosque was closed. The Majlises at that premises always commenced between 10 and 11 P.M. I said my prayers for the first time there 8 or 10 years ago but I saw the Mehrabs many years before that when passing by that road. In 1919 I first saw the Mehrabs. I do not remember the month. Mehrab is an arch built over the place intended for the Imam to stand when leading prayers. Such a Mehrab is found in every mosque. I do not know Mehrabs in ordinary dwelling houses. The Mehrabs are in a room on the ground floor. The Imambara room is about 25 or 30 cubits in length.

Cross-examination for plaintiff No. 2.

Cross-examined by pleader for plaintiff No. 2 :—I read in Catholic Orphan School upto 4th class. I left school in 1906 when I was 14 or 15 years old. I have no other work than what I have stated above. My grandfather appointed me Mutwali in 1928 in respect of his Wakf estate. Before that I was not a Mutwali in respect of any other Wakf estate. I was under my father's protection up to 1910 when he died. He put me as a copyist in the invoice department of the office of Landale Clerk abont 6 months before his death on a salary of Rs. 30 per month. My pay was enhanced to Rs. 40 per month. I worked there for 3 or 4 years, I was discharged owing to reduction of the establishment in 1913 probably. I do not remember the month. After that I did not enter any service. I began to learn gunny brokery business from an Ostad. I learnt it for 3 or 4 years. After the death of Ostad I did that business for about 2 years. After that I did not do any other work. I have no wife and children. But I have got a Mutai wife since 1924 for a term of 11 years. That term will expire after 1 month 7 or 8 days. I have got no children by this wife. She is at premises No. 10, Portuguese Street. I get Rs. 30 a month from the Wakf estate. I draw Rs. 125 a month from Bibi Analo's Imambara. I get also Rs. 20 or 25 a month from my mother's sister for looking after her estate comprising three houses. The Wakf estate of Bibi Analo is in my possession after the death of my sister. She was its Mutwali before me when she was in possession. She died in March 1924. Her husband is alive. His name is Prince Askari. He lives at Elliot Road. He has got no children by my sister. Bibi Analo

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created that Wakf. The sister spoken by me was my step-sister. Her two brothers predeceased her. Her mother also predeceased her. My father after her death married my mother. Moriam Khanu was probably the name of my sister's mother. I do not know the name of Bibi Analo's husband. I do not know if she left any children or how many were left by him.

N. B. Banerji,

Offg. Sub-Judge.

10 3-5-35.

Further cross-examined :—My step-sister's first husband was M. Husain Shiraji who divorced her Her second husband was Prince Kisra Bukht. Divorce was also taken from him. Prince Askari was her fourth husband. Mirza Kasim Miskee was her third husband. On his death Prince Askari married her before 1910. My sister's name was Kamarunnessa Khanum. She died in 1924. It is not true that she died 2 or 3 months after her marriage with Prince Askari. It is not a fact that she married Prince Askari in 1924. I have no paper with me now to show that my sister was a Mutwalli of Bibi 20 Analo's Wakf estate. I do not remember if there is any such paper to show it. I was appointed Mutwalli by my sister on her death-bed. I was declared by Court of 2nd Subordinate Judge of Alipur afterwards as the Mutwalli in a suit by the public against me as a defendant My appointment was verbal. My sister was appointed Mutwalli by Haji Muhammad Jafar. I was alone appointed Mutwali of the Wakf estate I did not even appear in that suit. Syed Hadi Kazmane, Syed Korim Aga Ispahani, Mirza Mahammad Mehdi Khorasani and another were the plaintiffs in that suit. Makhambala Dasi and others including myself were the defendants in that suit. My sister did not borrow money from Makhambala Dasi pledging her property but from 30 one Balai Chand De. I do not know if the latter was husband of Balai Chand De(*sic*). I do not know whether the amount was Rs. 46,000 or not. The mortgagee brought a suit. That suit was at first decreed but the decree was declared null and void subsequently. There was no appeal in the mortgage suit. I made one or two affidavits in the mortgage suit alleging it to be the personal property of my sister. Next says, I did not do it in the mortgage suit but I took that plea by way of my defence in the mortgage suit. I remember that I made one or two affidavits in the suit in which I was made a defendant. It is not true that I made those four persons apply to the Court to get the property of Analo Bibi declared as a Wakf 40 property, finding no other alternative in the matter. I was watching the proceedings and I found the plaintiffs represented by Babu Satis Chandra Ghose and Moulvi Ibne Imam. I did not give any evidence in that case. I was summoned to produce something which I sent to Court. I do not remember which things were required as were mentioned in the summons and which things were sent by me to Court. I do not remember whether that suit was one for a declaration whether the mortgaged property was Wakf property. You may refer to the record. I do not know whether any appeal

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

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No. 71. Md. Kazim Shirazi, witness No. 19.

was preferred by the mortgagee in the High Court as no notice is served on me. A Kabinnama might have been executed when my sister was married by Prince Askari. I have not seen the Kabinnama. I do not remember if I attended that marriage. I attended this Court yesterday and to-day and on no other day. I have attended Court for the last 3 or 4 days. I do not remember on which day I have been summoned by Court to give evidence. From the summons, I say that I was summoned to attend Court on 22nd March to give evidence. From memory I say that I got the summons in April. I received summons from my servant who handed it over to me when I was on the first floor of my house. I received the summons after 22nd March. So how can I come to Court on that date. When I received the summons I was told that I would be informed when I would have to attend Court. I came here at 1-30 P. M. of my own accord to enquire when my evidence would be necessary. Three or four days ago when defendant's man came to me to enquire of me, I told him that I would not be able to attend Court within 3 or 4 days. I do not remember how many times I have deposed in Court. There was litigation regarding the Wakf estate of Haji Karbalai Mahammad since 1856. That estate was never in the hands of Receiver. It is in my hands. I cannot say what is the income of that Wakf estate. I have filed its accounts in the High Court. None fixed my salary at Rs. 125 in the Wakf of Bibi Analo. I draw the amount of my own accord as a Mutwalli. My grandfather Haji Karbelai Mahammad left 4 sons and 7 daughters. None of them is now alive. Their descendants are alive. When there is necessity I take the legal advice of Moulvi Ibin Imam. I have known him for the last 8 or 10 years. No record is kept whether public or private about the attendance of persons at the Majlis held during Maharum. I once attended the Majlis during the time of Prince Kamar Kader and received some Hisya containing some preparation of sweets. The Prince himself was looking after the distribution of such Hisyas. I used to go to Metiaburz on occasions of mournings or marriages or Majlises. There may be 3 or 4 or 5 mosques between Khiderpore bridge and Khiderpore Dock including the Shia mosque of Kamar Kader. I do not know the premises of those mosques as I never attended all of them which do not appertain to my Shia sect. There is one Shia mosque in Canning Street at premises No. 61. It is known as Moghul mosque. The mosque at Esplanade is one of Mysore family. I do not know if it is managed by Sunnis or Shias because I have seen Sunnis say prayers there. I do not know whether Golam Hossain is the Mutwalli of that mosque. I know him. He is son of Jani Saheb. He is a Shia. I have not gone to Metiaburz by Lower Circular Road for last 20 days. I do not look after this case. I go to Prince Askari's place on occasions of Id and Bakrid. I had not been to Lucknow to bring Subdar Jah. I do not remember the dates of marriages of my father's sisters. My paternal aunt's daughters have also left children. Syed Hadi Kazemani, M. A., Ispahani, M. A., Shiraji are the three present trustees appointed by High Court at our instance in respect of Wakf property of Haji Karbalai Mahammad. By the scheme prepared in the High Court decree the properties of the Wakf

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estate have been vested in them although custody and possession thereof both movable and immovable have been vested in the Mutwalli. I do not remember the name of my *muta* wife's mother. The father of my *muta* wife is late Ali Jan. Some 10000 people assembled in the procession on the 8th day of Muharum in respect of Haji Karbelai's Wakf. From 1st day to 10th day of Muharum 200 to 2000 people assembled in the Majlis. The procession lasted for 2½ hours. In the procession Purdanashin ladies went in carriages or motor cars.

N. B. Banerjee,
Offg. Sub-Judge.
4-5-35.

Mahamed Kazim Sherazee.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 71.
Md. Kazim Shirazi, witness No. 19.

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No. 72.

Nos. 341-342—*Deposition of Panchanan Mazumdar, witness No.* 20 *for defendants Nos.* 3 *and* 4, *dated the* 4*th May* 1935.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 72. Panchanon Mazumdar, witness No. 20.

T. Suits Nos. 1 and 2 of 1934.

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Deposition of witness No. 20 for the defendants 3 and 4 taken on solemn affirmation on the (4th) day of May 1935, before Babu Nikunja Behari Banerjee, 3rd Addl. Sub-Judge, Alipore.

Examination.

My name is Panchanan Mazumdar, son of late Nabakumar Mazumdar, by caste Hindu. My age is 36 years. I reside at premises No. 21 Raja Lane, District 24-Parganas. My occupation is service.

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I work in a Japanese firm Shera Shoten. I serve that firm for 17 years. I know Mr. M. Shera. I know premises No. 28 Circular Garden Reach Road. Mr. Shera took a lease of that premises from Syed Ali Bahadur by a registered deed. I was present when the deed was executed. Shera executed it in my presence. Surendra Nath Shaha a neighbour signed as an attesting witness. This is the deed. Proves lease Ext. T. There was another lease executed by Mr. Neki(?) manager of Shera after the expiry of the lease. Mr. Shera is dead. Neki signed in my presence. I signed as an attesting witness. Proves lease Ext. T(1). Rents were paid. Messrs. Shera and Neki who got receipts in my presence. Munshi Makram Ali wrote and signed the rent-receipts in my presence. I know his hand-writing. The receipts are marked Exts. N63 to N68.

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Cross-examination.

Cross-examined by pleader for plaintiff No. 2 :—I have no appointment letter. I do not know who other than Surendra Nath Shah signed the first lease as attesting witnesses. Surendra Nath Shah is alive. He has a timber shop. I do not know who signed the lease as executant. The lease shows nothing to show that I attended its execution. I attended the registration office. I was not present at any time other than the times of talk and registration. Makramali presented this deed in the registration office. Mr. Shera signed before the Registrar in my presence. Makram Ali was also attesting witness to the 2nd deed. I do not remember the name of the 3rd attesting witness. It was executed in 1933. I have not brought all the rent bills called for but I have one rent bill for each year from 1930 to 1935. The bills for 1928 and 1929 are not found as the records of those years along with those bills were destroyed. I do the work of a clerk. My salary is Rs. 60. I received summons about a month ago, to attend Court on 22nd

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 72. Panchanon Mazumdar, witness No. 20.

March 1935. It was served on me before that date. I did not attend Court on 22nd March 1935. I have come here to-day at the request of Makram Ali.

N. Banerjee,
Offg. Sub-Judge.
4-5-35.

Panchanan Mazumdar.

4-5-35.

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No. 73.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

No. 343.—Deposition of Akbar Ali, witness No. 21 for defendants Nos. 3 and 4, dated the 4th May, 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 73. Akbar Ali, witness No. 21.

Deposition of witness No. 21 for the defendants 3 and 4 taken on solemn affirmation on the (4th) day of May. 1935, before Babu Nikunja Behari Banerjee, 3rd Addl. Sub-Judge of Alipur.

Examination.

My name is Akbar Ali, son of Jaher Khan. My age is 29/30 years. I reside at No. 1 Mominpur Road, District 24-Parganas. My occupation is trading.

Habib Khan Kosai is my sister's husband. He is now at Bhagalpur. He has got his house there with lands. He took settlement of premises No. 1 Mominpur Road by a deed. He signed the deed in my presence. I cannot say who wrote the deed. Munshi Makram Ali read over the deed. I was not an attesting witness to it. Proves signatures of Habib Khan Kosai marked Exts. K3 to K7. Habib paid rents and got receipts. I have brought the receipts made over by him. The receipts were written and signed by Munshi Makram Ali. I know his handwriting. The receipts are marked Exts. N69 to N71. Habib still possesses the land.

Cross-examination.

Cross-examined by pleader for plaintiff No. 2:—Habib Khan is alive. He has no children. There are Ghurs on the land covered by his lease. Munshi Makram Ali and Habib Khan and 1 or 2 others were present at the time of the lease. I do not know when the talk of settlement took place. I am illiterate. The signatures are expunged.

N. Banerjee,
Offg. Sub-Judge.
4-5-35.

Read over, interpreted and admitted to be correct.

S. De,
B. C.
4-5-35.

(Thumb-impression).

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No. 74.

Nos. 344-364—Deposition of Mr. Unsud Dowla, witnes No. 22 for the defendants, dated the 4th May 1935, etc.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Defendants' evidence.

No. 74. Mr. Unsud Dowla, witness No. 22.

T. Suits Nos. 1 and 2 of 1934.

Deposition of witness No. 22 for the defendants taken on solemn affirmation on the 4th day of May 1935, before Babu Nikunja Behari Banerjee, 3rd Addl. Sub-Judge of Alipore.

Examination.

My name is Unsud Dowla, son of Munisud Dowla. My age is 60 years. I reside at Garden Reach Paharpur Road, District 24-Parganas. Where I am a Bar-at-law.

I am a Barrister. Nawab Nasirul Maulek Mirza Shujaat Ali Khan Bahadur was my father-in-law. I am a political pensioner. I am related to the Ex-King of Oudh family through my mother's side. I started some institutions at Garden Reach in conjunction with other persons such as Shamsheah Zenana Madrasa, Garden Reach Night School for boys, Matiaburuz Educational Society and a H. E. School. I am the Secretary of the first two institutions. I was the Secretary of the last institution. I started Libraries at Garden Reach named Burtala Muslim Library and Garden Reach Young Men's Association Library. I was the Chairman of the Garden Reach Municipality before the amalgamation with the Calcutta Corporation. About 6 or 7 years before that I was elected its Commissioner. After the amalgamation I was elected a Commissioner of Calcutta Corporation. The amalgamation took place in 1924. I continued to be elected Commissioner of Calcutta Corporation from 1924 to 1934. I was a Deputy Mayor of the Calcutta Corporation for the year 1927. Since the separation of Garden Reach Municipality in 1935, I have been its Vice-Chairman. I was an Honorary Magistrate for about 6 or 7 years up to 1924 when the Bench was abolished. I was also president of the Bench. I was a Trustee of Calcutta Improvement Trust after Mr. Benjamin I. C. S. I was a member of the Selection Committee of Calcutta Medical College. I am a member of the governing body of Bengal Engineering College. I was Sherif of Calcutta in 1929. I am a member of the Calcutta Licensing Board. I am a member of the Executive Committee of the Tuberculosis Association in Bengal. I am a Trustee of Haji M. Mosin's endowment *viz.*, Hooghly Emambara. I am a Trustee of the Wakf Estate of Her Highness the Nawab Begum of Murshidabad. I was a Trustee of All India Shia College at Lucknow for some time. I am a Trustee of M. Laiq Jubilee Institution. I

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

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was a Trustee of Calcutta Corporation Provident Fund. I knew Prince Kamar-Kader Bahadur. I accompanied him to Delhi Durbar on the occasion of the King Emperor's visit in India, when he was invited to attend it. Prince Kamar Kader was the eldest surviving son of the Ex-King of Oudh and was recognised by Government as the head of Oudh family. Occasionally I used to visit him. He was a Shia Mahomedan of orthodox views and a deeply religious man. I am aware that he created an endowment for religious and charitable purposes. He had a talk with me about this Wakf and also consulted me. He once expressed his desire to create a religious Wakf according to the custom of his family and to go on pilgrimage to the holy places at Karbela. This talk took place a few years before his death. About 12 or 18 months after this talk he had consultation with me about the provisions to be made in the Wakf and as to the constitution of the Wakf and other connected matters. Mir Syed Ali Humayun one of my uncles who lived at our place and who was the tutor of the Prince's youngest son used to inform me that the Prince was very busy with arrangements for the creation of this endowment. I had discussion with my father in-law and Moulvi Syed Hussain Askari who was preparing the draft of the Wakfnama, about the Wakf. Moulvi Hussain Askari occupied an important position in the Oudh family. He was the head master of the Princes' School. He was a lawyer also. He was trusted by the members of the family. He was a Siah Mahomedan with religious sympathy. So he was entrusted with the preparation of the draft. After the draft some lawyers were consulted by M. Syed Hussain Askari but I cannot say at whose instance. Such lawyers were Mr. B. Chakrabartty, Mr. Nasim Ali and perhaps Dr. Rash Behari Ghosh. I think that legal opinions of such lawyers was obtained. Mr. B. Chakrabartty was an eminent counsel at that time. I also expressed my views on the draft. The whole thing might have taken about 18 months or 2 years before the execution of the Wakfnama. I heard of the execution of that deed. I was invited to attend it but I did not attend it, owing to some differences between me and the Prince. I wanted him to make some provision for education but finding no mention of it in the draft I kept away from attending the execution of the deed. During the aforesaid 18 months I met the Prince. I also met him after the execution of the deed. He was in fair state of health on such occasions. On hearing the statement in para 9 of plaint of Suit No. 2 of 1934 witness says that the statement regarding health of the Prince as made therein is quite incorrect. From my knowledge of the Prince I cannot say that he was under the influence of anybody at the time of executing the Wakfnama. On hearing the para 11 of the plaint of Suit No. 2 of 1934 witness says that to the best of his knowledge the Prince had real intention to create the Wakf.

Cross-examination for plaintiff No. 2.

Cross-examined by pleader for plaintiff No. 2:—I am now about 60 years old. I say my age by guess. I married in 1896 or 1897 just before the great earthquake. I passed my entrance examination then. I went to England in 1900 to qualify myself for the bar and for mining engineering. I returned

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to India in 1905 as a Barrister. I took up the profession of law as my occupation for some years up to 1912 or 1913. I all along lived at Garden Reach. Prince Kamar Kader was probably about 70 years old when he died. So far as I know, he was a resident of premises No. 123 Circular Garden Reach Road, at a distance of about 3 miles from my place. I am interested in many public institutions and public affairs since my return from England. Prince Kamar Kader's son Syed Ali was older than me. I cannot say how many years. I never enquired into the private affairs of the Prince Kamar Kader or of his family. In his *harem* there were two sisters Khatuns who succeeded one another of whom I have heard. If he had done anything he must have done it lawfully as he was a religiously minded man. Those Khatuns must have had some connections with him as they lived with him in his house. S. Hossain Askari had no connection with the Khatuns. He was the Prince's man and not Khatun's man at all. I cannot say if Prince Kamar Kader was addicted to cocaine. Cocaine is not an intoxicating drug in my opinion. I have no personal experience of it. I went through the draft of the Wakfnama when it was prepared. The original Wakfnama after its execution was not shown to me. A copy of the Wakfnama was sent to me either by the Prince or by the management of the Wakf estate after its execution. I received it through a man. I did not give any receipt to him for it. The Prince died 12 or 18 months after the execution of the Wakfnama. The consultation took place at premises No. 123, Circular Garden Reach Road, when he had such consultation with me some of hjs Mosahibs and some outsiders were present there as there was nothing secret in the matter discussed. I did not charge any fee as it was a friendly and not a professional consultation. I kept no diary or note about such consultation. Since Prince's death I had never been to his house nor had any talk with any body either Syedali or his heirs about the aforesaid consultation. I have read the printed copy of the Wakfnama sent to me. I do not remember if there is any mention in it of Saheba Khatun's lease. The Prince died at premises No. 60 or 61 Ballygunge. I was sent for from his house when he was lying seriously ill. On arrival there I found the Prince alive and some ladies behind the Purdah in the evening, but I did not see them. I do not remember which members of his famiiy were there then. I attended Prince's funeral ceremony at Garden Reach close to evening on next day after his death. I heard a rumour that a child was set up by some body as that of Prince Kamar Kader. I do not remember if it was in latter's life time or after his death. I never interfered with the Prince's affairs or printed into his affairs. I mentioned Prince's intention to create a Wakf to Husain Askari and my father-in-law. At the initial talk between me and the Prince there was no draft of the Wakfnama. I considered that as a very important matter. I keep notes of professional matters in my diary book but not of non-professional matters as they are so many. I had other talks with the Prince before he had the consultation with me. He never made any special request to me through any body to become an attesting witness to the Wakfnama. I do not remember in which part of the month or the year his message came to me about my attendance to attend the execution of the deed

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at his Khidirpur house but I do not remember the house referred to as it was not specified in that message. The Wakfnama was not to my liking to the extent that it contained no provision about educational institution. I did not practice much in the High Court but in the Courts at Alipore and Sealdah. I remember that a suit was brought by Prince Baher and others against Prince Kamar Kadar in the High Court but I do not remember the nature and details of the suit. I was not aware that Amir Begum had a large sum of money as her dower due by the Prince. I remember that the Prince was declared an insolvent before his death but it was subsequently cancelled owing to some settlement being arrived at. I am not aware if Shaheba Khatun paid up his creditors' dues. I never kept myself in touch with the Prince's affairs since his death. I used to get certain information about his affairs through my maternal uncle Mir Syed Ali who used to go to the Prince's house and who is dead. That uncle died 2 or 3 years ago. I do not remember the year of his death. To my knowledge there is no record to show my consultation with the Prince in regard to the Wakf. As a professional lawyer I did not give my legal opinion to him. But as a lawyer I gave my opinion to him. His consultations with other lawyers as aforesaid did not take place in my presence. Husain Askari passed the pleadership examination. The Ex-king of Oudh created no Wakf. He used to meet the expenses of the Imambara and the mosque out of his personal income. I know of certain other descendants of Oudh family who have made Wakf. I do not remember if any other son of the Ex-king of Oudh than Prince Kamar Kader created any Wakf out of their personal properties. How could they do it as the sum of Rs. 500 received by them did not suffice to meet their own personal expenses. I know of a nephew and a daughter of the Ex king of Oudh having created Wakf. The property of Prince Kamyab Mirza stands now as Wakf but I cannot say if it was made Wakf by him or his wife. He left no issue. He died 10 or 12 years ago. He used to get a political pension of Rs. 500. Prince Kamar Kadar could not go to Karbela.

N. Banerjee,

Offg. Sub-Judge,

4-5-35.

Further cross-examined:—I do not remember the name of my mother's father. I have no brother now. My younger brother died 2 or 3 years ago. I have no sisters. I had no sisters. My father left myself, my younger brother and my mother. I now remember the name of my mother's father. Syed Mirza was latter's name. He died in 1857 or 1858. He had 18 or 19 issues. I remember 2 uncles and 2 or 3 aunts. My mother was related to the senior branch of Oudh family *i.e.* the descendants of Nawab Shujauddowla and not to the family of Ex-king of Oudh. I cannot say how she was related to Shujauddowla's family. I get a political pension of Rs. 25 per month. My father died before the death of the Ex-king of Oudh. So he did not get any pension. He was in the service of the Ex-king of Oudh. Whatever allowance he used

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to get from the latter was also received by me on his death as a courtier of the King. I am not a tradesman. I am a land owner and house owner. I do not earn anything professionally. I have no other income by my personal exertions. I get monthly income of Rs. 300 to 400 from my landed properties. I have got 6 or 7 houses besides some Bustee lands. My share in landed properties is 8 annas The girl's school was started in 1914 or 1915. It has now got a house of its own. No subscription was raised from the public. A capital grant of about Rs. 34000 or 35000 was received from Government for its building. The land was given by the Wakf estate of Nawab Begum of Murshidabad. The building was constructed under my supervision as a Secretary of the institution. Accounts were kept for it. A high English school was started in 1923. It has a building consisting of Pucca rooms with corrugated roofs. Sir David Yule gave 4½ bighas of land for it. We raised subscriptions amounting to Rs. 10,000 from the public and got Rs. 10,000 as a donation from Garden Reach Municipality. About 17½ kottas of land were purchased out of Rs. 20,000. There are accounts to show it. The school building began to be constructed in 1923 or 1924. I am the President of Burtala Muslim Library. The Library is 10 or 12 years old. I do not remember in which year I was a trustee of All India Shia College at Lucknow. I do not remember if I attended any meeting of that College. From my childhood I became acquainted with Prince Kamar Kader. I do not remember when my first visit took place. I was not a regular visitor of his house. I went to house generally when I was sent for by him. I met him at premises No. 123, Circular Garden Reach Road and at other places. I had been to his Jamutola Kuti several times. My visits at that Kuti were confined to 2 or 3 years. I cannot specify those years. To my knowledge Prince Kamar Kader did not build any new mosque or new Imambara Personally I did not raise any subscriptions for any mosque or Imambara. I cannot say if he contributed to the repairs of any mosque or Imambara. He contributed some lands to the King's Imambara because its western wing was dark, after purchase of that land from the Collector. I cannot say how much he paid for that land or in which year the purchase was made. I suggested to him that matter and perhaps I drafted his petition, to the Collector. I do not know that Prince Kamar Kader left his wife and children and lived with Shaheba Khatun as his concubine in premises at Jamultala. I do not remember in which the youngest son of Prince Kamar Kader died. He died several years before latter's death. I do not know if he married. I do not remember the year when Prince Syed Ali was first married at Bhagalpur and again at Garden Reach. I know Mr. A. Salik, Deputy Magistrate of Alipore. When Prince Kamar Kader consulted me about the Wakf, his income from his properties amounted to Rs. 4,000 to Rs. 5,000 a month. Besides that he used to get Rs. 4,000 as pension per month. I cannot remember how much income was set apart by him for religious and charitable purposes. In that Wakfnamah there were provisions for other institutions than educational institutions. I was not concerned whether he intended to make Wakf of all his properties or some of his properties. So there was no consultation by him with me on that point. In

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my school days I became acquainted with Husain Askari for the first time. I had no idea of general financial condition of the Prince Kamar Kader then. Husain Askari used to give me lessons in science occasionally when I read in M. E. School I have no direct knowledge as to whether Syed Ali brought a suit against Shaheba Khatun for return of the G. P. Notes she got from the Prince. I do not know if Husain Askari gave evidence in that suit. I know Mufti Altaf Hossain He is my cousin. He married my brother's daughter. I do not know if he deposed for Saheba Khatun in the aforesaid case. I cannot say if Husain Askari used to go to her place at Jamutala Kuti. To my knowledge he had no connection with her. By general reputation I say that he was not her man. I do not know if he identified her when she put her signatures on the back of the G. P. Notes. I am on visiting terms with Prince Askari. I met him last about 2 months ago in connection with the annual general meeting of Shia Orphanage. One of the examples of Husain Askari being trusted by the Princes of Oudh family is that Prince Kamar Kader entrusted him with the drafting of his own Wakfnama. Another is that under the advice of Husain Askari Prince Furrukh Mirza and Prince Kamyeb Mirza and Princess Chatr Ara Begum, daughter of the King made Wakf of their properties. He used to draft petitions for increment of Princes' pensions and King's grandsons used to call him Dada. These are said by the witness in answer to the question what are the acts of the individual Princes from which he noticed that he was trusted by the members of Oudh family. I did not see the original Wakfnama of Prince Furrukh Mirza but I saw a copy of it perhaps. I was not an attesting witness to the Wakfnamas executed by him or Prince Kamyab Mirza or Chatr Ara Begum. I do not know in which year these deeds came into existence. Prince Furruk Mirza died about 20 years ago I do not know who wrote those deeds. I cannot say who were attesting witnesses to any of those deeds. I know the properties of these persons. Furrukh Mirza's properties are situated on the side of the river Hooghly. Kamyab's properties are situated on Garden Reach Road. Chatr Ara Begum's properties are situated on a passage off Garden Reach Road I know of three heirs of Prince Furrukh Mirza, *viz.*, Safdar Jah, Mursid Jada Sekunder Jah—two sons and Begum Saheba—one daughter. I saw Sekandar Jah about a week or 10 days ago. Kamyab Mirza left only a widow. Chatr Ara Begum is alive. She has no children. Prince Kamar Kader did not suffer from cerebral hæmorrhage and paralysis in 1915. He did not suffer at all from such diseases in 1915. According to his age he was carrying his years fairly well. This is what I meant by saying that he was in fair state of health. If other explanations are wanted I may give them. The Prince died of Influenza. That was a bad year for Calcutta. About a fortnight or so he suffered from that disease before his death. I cannot say how long he stayed at Ballygunge before his death.

Cross-examination for plaintiffs Nos. 1 and 1(a).

Cross-examined by counsel for plaintiffs Nos. 1 *and* 1*a*:—I have paid income tax. I do not pay it for a year or so. Certain sources of my income that was liable to tax have ceased to exist. This is the reason why the tax on that

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income has also ceased. The fee that I used to receive for attendance at meetings of Improvement Trust as a member is one of such sources of income. Another source is the interest on G. P. Notes valued at Rs. 12,000 to Rs. 15,000. I cannot say the approximate date when the G. P. Notes were sold. I got those notes on my return from England but I cannot say how long after my return I got them by purchase. I sold them because I wanted cash for some purposes although I was not indebted to anybody then. I am not indebted to anybody in my life. I do not remember on what the cash money was spent. I used to get my fees at the rate of Rs. 20 for each weekly meeting of Improvement Trust. I do not remember the amount for which I was assessed last year on that account. I was assessed with income tax only with regard to such fees and interest on G. P. Notes. I was not assessed with income tax on my professional fees as a Barrister. My brother also used to get political pension of Rs. 15 per month. It is not drawn by his heirs. They have not applied for it. It is in the discretion of the Government to give them if they apply for it. The terms and conditions of pension were the same in the case of my brother as in mine. I do not know what functions my father exercised as a courtier of Ex-king of Oudh because I was only two years old when he died but there are publications in which his duties are defined. After my father's death I continued to receive my father's allowance at Rs. 100 per month as my own. I was only two years old and my uncle used to look after my duties. My uncle used to get nothing out of that sum for looking after my duties because he was also a servant of the Ex-king. I do not remember who looked after his affairs then. He was looking after his and my duties. I received summons about a week before I came to give evidence, in these cases. I do not remember the date. I do not recollect what was the date of attendance mentioned in the summons. The manager of Syed Ali's estate took the summons to me. He is Mirza Mahammad Zafar or so. I do not know his full and proper name. I did not attend Court in connection of this case before Saturday last. The aforesaid Manager met me on Saturday morning and requested me to attend Court at 2 P. M. on that day. My father-in-law became Khan Bahadur in 1893. He was not a Consul General of Persia then. I do not know when he became permanent Consul General of Persia or when he became so for the first time. He died in 1925 as such. I cannot say approximately for how many years he was a Consul General before his death. Witness next says, I made a mistake. He died as a Consul. It may be that he was a Consul General for about a year. I cannot recollect even now the year in which he became Consul General. It may be that he was not Consul General on the date of execution of the Wakfnama. I have no children. I inherited nothing either directly or indirectly from my father-in-law Mirza Sujat Ali Beg as my wife predeceased him. One of his daughters was married to my brother. She also predeceased him. She left three sons and three daughters. They also inherited nothing from their maternal grandfather as their mother predeceased her father. Shujat Ali Beg was the Head Master of Nezamat School in Murshidabad. He was the private tutor guardian of the grand-children of the Nawab of Murshidabad whose estate was under Court-of-Wards. I do not know if he was in the service of the

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Nawab of Murshidabad before he was Head Master of Nezamat School. It is a lie that he was son of one of the keepers of the game-cocks of the Nawab of Murshidabad. If that were the case he would not have married one of the daughters of Nawab Nazim of Murshidabad named Shahr Banu Begum. My mother-in-law was his first wife. Shahr Banu Begum was his second wife. She was a widow when she married Shujat Ali Beg. The latter was the tutor and guardian of the two sons of her first husband. I do not know if he was appointed as tutor by Court-of-Wards. I am not clear whether he was acting as such when he married Shahr Banu. It is a lie that he was Daroga of the kitchen of Firdous Mahal mother of the latter. I think that Prince Kamar Kader attended the Delhi Durbar. I did not accompany him when he left for the Durbar. I had no invitation to the Durbar. My grounds for saying that he was a deeply religious man are (1) that he observed the mourning period of Muhurrum very strictly (2) that he held Majlishes at his house and other Shia Mahomedan festivals and ceremonies (3) that he helped the poor, the widows and the orphans (4) that he attended religious functions on the occasions of Id festivals of Mahomedans (5) that he sent robes to the high priests who led the Id prayers (6) that he purchased a land from his private fund and made a gift of it to the Imambara of the Ex-king (7) that almost all his properties have been made over to religious endowments (8) that he was very anxious to go on a pilgrimage to Karbela. These are some of the main traits of his religious side. I do not remember other traits now. (As the time limit allowed to the counsel of the plaintiffs 1 and 1a according to his statement is up no further questions are allowed).

N. Banerjee,

Offg. Sub-Judge.

8-5-35.

Unsud Dowla.

Cross-examination for plaintiffs Nos. 1 and 1(a).

On plaintiffs 1 *and* 1a*'s petition the witness is re-called for further cross-examination* :—I seldom went to Prince Kamar Kader's house with the intention of attending the Majlis. If I happened to be there during the Muharrum I saw arrangement for the Majlis there. I know that before execution of the Wakfnama he regularly attended Majlises during the Muharrum. His mother also used to hold Majlises in the same house. Those Shia Mohammadans who can afford and have the intention hold Majlises during the Muharrum. There is no custom or rule that all Shia Mohammadans do it. Those of them who can afford do it. Those who do not want to do it do not do it. The holding of Majlish does not depend upon the creation of a Wakf. It is a meritorious act. It is a sign of a man's religious tendency and is outward manifestation of his inner religious feelings. It is a custom of Shia Mahomedan to hold a Majlis. I do not think that it is an extraordinary thing for him. Mahommedans observe their festivals and religious ceremonies as other communities observe theirs. Helping widows and orphans is an ordinary thing for those Mahommedans who can afford it and have the intention to do

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so. I do not know of any widow but I know of two or three orphans being reared up by the Prince in his own house. One of such orphans is alive. His name is Nowroze. I do not remember the names of other orphans reared by the Prince. I saw Nowroze on the street recently, perhaps during the last Muharrum. I saw him in the house of Prince Kamar Kader in his life-time long ago. Shias are expected to attend religious functions during festivals because they are held for their benefits. I saw the draft of the Wakfnama after I advised the Prince to make some provision for educational institutions. Maulvi Husain Askari showed it to me at his house. I cannot say how many days or months before the execution of the Wakfnama I saw the draft. I heard from several persons that Husain Askari was entrusted with the preparation of the draft. It is not incumbent on all Shias to have a spiritual guide or Muquallib. I am supposed to be a Muquallib. In case of necessity I refer to Moulana Nasir Husain Shamsullema Mujtahid of Lucknow. I do not know if there is a person who assumes the title of Mujtahid for Calcutta and Garden Reach. A Mujtahid means a person who thinks himself competent to give legal opinion on questions of Shia theology. To be entitled to that title he must hold a certificate from some higher authority by which I do not mean any official body. I do not know if there is any such higher authority in India. I cannot say if Moulana Nasir Husain of Lucknow is also the spiritual guide of the family of the ex-king of Oudh or whether he was the spiritual guide of Prince Kamar Kader. My impression about the object embodied in the draft of the Wakfnama seen by me was that it contained provisions for the establishment of mosque and Imambara for holding prayers and Majlises. These are the only two objects I remember. I do not remember if there are more than two objects embodied in the draft. As an Imambara already existed in his house the Prince endowed it and established a new mosque as no mosque existed before. The Imambara existed at his house No. 123, Circular Garden Reach Road before the creation of the Wakf. I do not think that I entered that Imambara when any ceremony was being held there. I might have entered that Imambara on other occasions. A room in the upstairs of that house was allotted to Imambara. I do not know what relationship existed between Husain Askari and Shaheba Khatun. I can not say if the statement of Prince Syedali that Husain Askari acted as an agent of Shaheba Khatun and she called him father is true or false. Mirza Sujat Ali Beg my father-in-law was a great friend of Moulvi Husain Askari.

N. Banerjee,

Offg. Sub-Judge.

10-5-35.

Re-examination.

On defendants' petition the witness is re-called for further examination :— I received about Rs. 30,000 as Sherif's share of the fees realised in Sherif's office. I inherited jewelleries of my father worth about 2 lakhs of rupees.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Defendants' evidence.

No. 74. Mr. Unsud Dowla, witness No. 22.

Cross-examination for plaintiff No. 2.

Cross-examined by pleader for plaintiff No. 2:—I have nothing with me now to show that I received Rs. 30,000 as net fee as a Sherif. Sherif bears the cost of his office. There are also several endowments for the purpose. I paid to the Deputy Sherif Rs. 12,000 out of my share of Rs. 30,000. I had not to pay any income-tax on the balance of Rs. 18,000.

N. Banerjee,
Offg. Sub-Judge.
10-5-35.

Unsud Dowla.

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No. 75.

Nos. 365-391—Deposition of Md. Makram Ali Munshi, witness No. 23 for defendants Nos. 3 and 4, dated the 8th May, 1935 etc.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 75. Md. Makram Ali Munshi, witness No. 23. Examination.

Deposition of witness No. 23 for the defendants 3 and 4, taken on solemn affirmation on the 8th day of May, 1935, before Babu Nikunja Behari Banerjee, 3rd Additional Sub-Judge of Alipore.

My name is Md. Makram Ali Munshi son of late M. Wajed Ali. My age is 37 years. I reside at 11, Rangolal Street, District 24-Parganas. My occupation is service.

I am a Tahsildar of the Wakf Estate since January, 1924. I entered service when the estate was in the charge of Mirza Syed Ali as Mutwalli. I reside at premises No. 11, Rangolal Street. It consists of two wings—one left and one right. They are both two storied. The manager of the Wakf Estate named M. M. Jafar Shirazi lives with his family in the right wing. Moulvi Abdur Samed Imam of Ismail Mosque and I live in the upstairs of the left wing. Four up-country men of Darbhanga and a man of East Bengal live in the downstairs. I knew Juhi Begum. She lived at premises No. 28, Circular Garden Reach Road when I entered service in 1924. Towards the end of 1927, she and her mother Amir Begum removed to premises 123, Circular Garden Reach Road. Amir Begum died on 28th January, 1928 at that place. Juhi Begum lived there upto August, 1929. Then she left Calcutta with Luddon Aga for Lucknow. From that time till about a month before her death she never lived at premises No. 11, Rangalal Street. She did not live there from 1924 till a month before her death. I was present when she came there a month before her death. First she went to premises No. 123, Circular Garden Reach Road but was forbidden to reside there by Syed Ali with the help of his Darwan. Then I was sent for by Syed Ali. A female from the carriage of Juhi Begum called me at the gate. I then approached the carriage door when Juhi Begum informed me of her arrival and of her brother's prohibition to enter the house and expressed her intention to stay on the road if she was not allowed admission into the house. I then went to Syed Ali and told him. He then asked me to vacate premises No. 11, Rangolal Street for Juhi Begum's occupation. I made arrangements accordingly. It was probably in March, 1931. Shayem Shah Mirza went to that house to hold an enquiry. I was not present at the time of his enquiry. Juhi Begum afterwards died on 16th April, 1931 at that place *viz.*, No. 11, Rangolal Street. She was not at premises No. 4, or 11 Rangolal Street on 29th January, 1931. Premises

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1931.

Evidence for defendants Nos. 3 & 4.

No. 75. Md. Makram Ali Munshi, witness No. 23.

No. 4, Rangolal Street belongs to Basanta Kumar Sadhukhan. It does not appertain to Wakf Estate. Juhi Begum was not at premises No. 11, Rangolal Street, on 19th January, 1931. The Manager of Wakf Estate was at Barisal when she came to premises No. 11, Rangolal Street in March, 1931. The premises Nos 55/1, and 55/1/1, Diamond Harbour Road have been acquired by Calcutta Improvement Trust in 1929. Compensation money for those premises was withdrawn by Mutwalli Syed Ali with District-Judge's permission.. The plot of 5 cottas of land in Metiaburz has been acquired by Port Commissioners. The compensation money for it has been withdrawn by Syed Ali Mutwalli with the permission of the District-Judge. Premises No. 4, Koilasarak Road was sold to Mahammad Ilias by Syed Ali as Mutwalli with the permission of the District-Judge. M. Elias is in possession of that property. Khatija Bibi brought a Suit No. 120 of 1930, against M. Elias and us in the Court of the 4th Subordinate Judge at Alipore. The suit was dismissed after contest. Premises No. 60 Ballygunj Circular Road was sold by Syed Ali as Mutwalli with the permission of the District Judge to M. N. K. Sherazi in 1931. It is possessed by the latter now. Premises No. 2, Dent Mission Road was auction-purchased by Yaqub Kasem Ali. The latter got a decree in respect of it. That property is still in the possession of the Wakf Estate. The remaining properties are in possession of Mutwallis as appertaining to Wakf Estate. Juhi Begum or Amir Begum never possessed those properties. In January, 1931 Juhi Begum did not possess any portion of the Wakf Estate. Mahmuda Bibi or Khatija Bibi or Husain Ali Khan never possessed the properties mentioned in the plaint. We have properties in Belati Bag at Lucknow. They are possessed by our tenants Asanulla Khan and Wahed Ali Khan. There are collection papers such as Rokar, Jama-bundi, cash book, ledger. These are four cash books of 1927-1930. The books of 1927 and 1928 contain entries in the handwriting of M. C. Ganguly. I know his handwriting. They are marked Exts. Q and Q1, The books of 1929 and 1930 are written by Mahtabuddin Ahmed Chowdhury. I know his handwriting. The books are marked Exts. Q2 and Q5. N. C. Ganguli is not in service now. Mahtabuddin has gone to Rangoon. These books are kept in the regular course of business. The entries in them are true. The cash-book of 1931 is filed in T. S. No. 10 of 1935 of 3rd Subordinate Judge's Court at Alipore. Those of 1924 to 1926, are filed in T. S. No. 35 of 1932 of 2nd Subordinate Judge's Court at Alipore. These are counterfoil books of 1926-1930. The three pages only of the book of 1927 and 18 pages of book of 1928 and 9 pages of book of 1929 are written by clerk Nurul Huq Chowdhury and signed by me. I know his handwriting. They are marked Exts. V to V2. The remaining pages of books of 1926 to 1930 are in my handwriting. They are marked Exts. V3 to V10. The tax counterfoil books of 1927 to 1930 are in my handwriting. They are marked Exts. W to W2. Those of 1924 to 1926 are filed in T. S. No. 35 of 1932 of 2nd Addl. Sub-Judge's Court. I know Sheikh Ujir Ali who deposed as a witness for plaintiff. He possesses one cottah of land appertaining to premises No. 120, Circular Garden Reach Road which is included in Wakf Estate. He executed a Kabuliyat in favour of Mutwalli Syed Ali in 1924 in my presence.

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Muhammad Elias a clerk of Wakf Estate wrote that Kabuliyat. Ujir Ali signed his name himself in my presence. The Kabuliyat was read over to him. Proves Kabuliyat Ext. K3. He is paying rents according to the Kabuliyat. Seeing the Dakhilas filed by tenants witness says that the first eleven of them are in his handwriting and that next two are written by Elias and signed by Kayem Husain. I know their handwriting. They are marked Exts. N72 to N84. I know Habib Khan Kasai. He executed a Kabuliyat in favour of Mutwalli Mirza Syed Ali in my presence. I wrote it. Proves Kabuliyat Ext. K4. He is paying rents according to this Kabuliyat. Harshadayal Shaha is a tenant of Mutwalli Estate. He executed a Kabuliyat in favour of the Mutwalli Syed Ali. I wrote it and he signed it in my presence. Proves Kabuliyat Ext. K5. He is paying rents according to the Kabuliyat. Abdul Ghafur Khan and Sheikh Sadim Ali executed Kabuliyats in favour of Mutwalli Syed Ali in my presence. I wrote them. Proves Kabuliyats Exts. K6 and K7. They are paying rents according to the Kabuliyats.

N. Banerjee,

Offg. Sub-Judge.

8-5-35.

Further cross-examined :—I know Sundari Bibi a tenant of the Wakf estate. She executed a Kabuliat in my presence. Abdul Rabbani wrote it. Proves Kabuliyat Ext. K8. Buddan Shah Teli executed a Kabuliyat in my presence. Abdul Rabbani wrote it. Proves Kabuliyat Ext. K9. Sheikh Esmail executed a Kabuliyat. M. Madris Alam wrote it. Esmail signed in my presence. Proves Kabuliyat Ext K10. Esmail is a tenant of Wakf estate. Sheikh Sobrati Bhisti executed a Kabuliyat in my presence. He put his thumb impression while I wrote his name. M. Madris Alam wrote that Kabuliyat. Proves Kabuliyat Ext. K11. Syed Amir, Ram Kissen Shah and Abdul Rahim executed Kabuliyats. M. Elias wrote them. They signed in my presence. Proves Kabuliyat Exts. K12 to K14. Adam Sharang, Abdul Sharang and Sundar Ali executed Kabuliyats in favour of the Mutwali. Syed Musadar Ali wrote them. Proves Kabuliyats Exts. K15 to K17. Sheikh Alimuddi executed a Kabuliyat in my presenee. Yarmiz Ahmed wrote it. Proves Kabuliyat Ext K18. Bejoy Kumar Banerjee is a tenant of Wakf estate. Hs executed a typed Kabuliyat in my presence. Proves Kabuliyat Ext. K19. Osman Gani is a tenant of Wakf estate. He executed a typed Kabuliyat in my presence. Proves Kabuliyat Ext. K20. Monglu Tamuli executed a Kabuliyat written by Abdul Gani in my presence. Proves Kabuliyat Ext. K21. Kanai Lal Bhandari is a tenant of Wakf estate. M. Elias wrote it. I know their handwriting and signatures. The Kabuliyat is marked Ext. K22. Rent is paid for the premises No. 28 Ramkamal Street to Hooghly Imambara. Dakhilas were received on payment of rents. This Dakhila is written and signed by Abu Syed Tahsildar and signed by Syed Altap Hossain Mutwalli of Hooghly Imambara. It is marked Ext. N85. The Thokas, Jamabandis and Khatian books are not filed in Court for the

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1931.

Evidence for defendants Nos. 3 & 4.

No. 75. Md. Makram Ali Munshi, witness No. 23.

convenience of realisation of rents. The cash book is the day book and the principal book which is filed. The Khatian book is written with reference to it. In the lifetime of Kamar Kader there was a lease of Shaheba Khatun. I have seen Dakhilas of the tenants showing realisation of rents by her. As she did not pay rent at the rate of Rs. 500 to the Mutwalli Syedali and did not pay taxes according to the terms of the lease, Syedali granted a lease to Sundermal in 1920, with District Judge's permission. That lease was cancelled in 1923. Rents are being realised in Khas by Wakf estate from 1924. From 1924 onwards, to my knowledge, Amir Begum or Juhi Begum never realised rents from any of the tenants of the Wakf estate. Municipal taxes are paid by the Mutwalli of the Wakf estate to the Calcutta Corporation. There are a mosque, Imambara, Wakf estate office, Mutwalli's quarters in premises No. 123 Circular Garden Reach Road. The mosque is situated on the ground-floor on the left hand side after entering through the gate. The Imambara is on the 1st floor above the Wakf estate office. I have seen the existence of the mosque and Imambara since I joined office in January 1924. Weekly Majlises are held on Thursdays at night in the Imambara. Majlises are held and processions are issued on 2nd, 7th and 10th days of the Muharram. The processions are issued on 2nd and 7th days of the Muharram from premises No 11 Rangalal Street, and passing through Ramkamal Street and Circular Garden Reach Road come to premises No. 123 Circular Garden Reach Road. On 10th day processions are issued thence to Bichali Ghat, Metiaburz. Hisyas are distributed after Majlises in premises No. 123 Circular Garden Reach Road to persons who attend them. Koran is read monthly on the grave of Prince Kamar Kader. Nawchandi Majlises are held on first Thursday of every Lunar month. In the month of Rajab Kunda is performed when Fetiya is read and Hisyas are distributed and pegions are fed. In the month of Ramjan Eptaris are distributed and goats are sacrificed. Hisyas are distributed to both Sheas and Sunnis who attend the ceremonies. There are Manager, 1 Tahsildar, 1 Clerk, 3 Durwans, one Koran Khan, one sweeper, one Pesh-Imam and one Khadem in the Wakf estate. Pesh-Imam and Khadem are not in service since the death of Syedali. Manager's pay is Rs. 200 per month, my pay is Rs. 40 per month, clerk gets Rs. 25 per month, one Durwan gets Rs. 25 and two Durwans get Rs. 14 each. Pesh-Imam's pay was Rs 20 per month and Khadem's pay was Rs. 5 per month. Cost of repair is incurred in every month. In the month when I joined service the cost of repairs was great. Average income is Rs 1,200 to 1,300. Besides litigation cost is incurred from the Wakf Estate. Prince Kamar Kader or Syedali received no allowance from the Wakf Estate. Syedali used to get Rs. 500 as pension, income of the Jagir and interest on G. P. Notes. Amir Begum received an allowance of Rs. 100 from the Wakf Estate from February 1924. Juhi Begum also drew it from February 1928 a month after the death of Amir Begum. The latter and Juhi Begum granted receipts. Juhi Begum had Rs. 3,000 deposited in Wakf Estate. She used to draw its interest at 1 per cent per month and grant receipts. She used to draw allowance at Rs. 50 per month. I know Urdu a little. The words 'Rs. 50' and the dates '10th June 1928, 26th July 1929 and 26th

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August 1929' in the receipts are in my handwriting. They are marked Exts. N86 to N88. The voucher number and the date in the receipt bearing Ext D2 are in my handwriting. The word 'pay' is in the handwriting of the Manager and below it there is his signature. I know Manager's handwriting. The English portion of Ext. D2 is in the handwriting of Nurul Huq Chowdhury. The words 'Rs. 250' and the voucher number in receipt bearing Ext. D mark and those in Ext. D1 are in my handwriting. The word 'pay' and signature below it in them are in Manager's handwriting. The English writings in those Exts. D and D1 are in the hand of Nurul Huq Chowdhury. The words 'Rs. 100' in receipt bearing Ext. E are in my handwriting. The voucher number and date in that receipt are in the handwriting of Nurul Huq Chowdhury. The word 'seen' and the initial and the date at the corner in the receipt are in the handwriting of the Manager. The words 'Rs. 100' the voucher number and the date in the receipt bearing Ext. E1, are in the handwriting of Nurul Huq Chowdhury and the word 'seen' the initial and the date at the corner are in the handwriting of the Manager. The words 'Rs. 100' and the date in the receipt bearing Ext. E2 are in my handwriting. The voucher number and the date are in the handwriting of Nurul Huq Chowdhury. The words 'pay' and 'seen' and the initial are in the handwriting of the Manager. The voucher numbers and the dates in the receipts bearing Exts. E3 to E5 marks are in the handwriting of Nurul Haque Chowdhury. The words 'pay' and the initials are in the handwriting of the Manager. The words 'Rs 100' and date in the receipt bearing Ext. E6 are in my handwriting and the voucher number and date are in the handwriting of Nurul Huq Chowdhury and the words 'pay' and 'seen' and the initial are in the handwriting of the Manager. In the receipts bearing Exts. E7 to E10, the voucher numbers and dates are written by Nurul Huq Chowdhury and the words 'pay and seen' and the initials are in Manager's handwriting. Receipts were taken from Amir Begum and Juhi Begum after payments. I know Hashem Ali Khan. When I joined service I did not find him at premises No. 28, Circular Garden Reach Road. He once came there in 1926 during Calcutta riot and left it after a few days after a quarrel with Juhi Begum and did not turn up there again. The Mutwali of Wakf Estate obtained rent and objectment decrees against tenants. I have seen original Wakfnama. Of the attesting witnesses to it Mufti Sahib and Abed Ali and Subdar Jah are alive and others are dead. Abinash Paul pleader is dead. Syed Ali died on 11th June, 1934 of paralysis. He got the attack of paralysis in the latter part of 1932. In April, 1933 a commissioner was appointed to examine him. After one sitting the commission was stopped as his voice was unintelligible. From that time his condition gradually became worse. He was at first under the treatment of Hakim Syed Ahmad and afterwards Dr. Bidhan Roy. Latter's certificate was filed in Court. He wrote and signed it in my presence. I know English. The certificate is marked Ext. Y. Dr. Nalini Ranjan Sen Gupta next treated him. It was not possible for him to understand any document from January, 1934. T. S. No 6 of 1934 in 3rd Sub-Judge's Court at Alipur is not a suit relating to Wakf Estate. Prince Kamar Kader brought T. S.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No 75. Md. Makram Ali Munshi, witness No. 23.

Cross-examination for plaintiff No. 2.

No. 20/18 against Mr. Maurice in 2nd Sub-Judge's Court at Alipore. It was transferred to 2nd Addl. Sub-Judge's Court at Alipore and numbered as 2 of 1927. The Mutwali got a decree in that suit in the High Court. Prince Kamar Kader gave his evidence on commission in that case. It is not true that I was convicted in a theft case. I was convicted in a trespass case in connection with a sub-tenant's hut when he complained against the tenant Tamijulla Sahib making me one of the accused as having given orders to break its lock. I was sentenced to 6 weeks' simple imprisonment. Tamijulla was a tenant of the Wakf Estate. Mutwali was convicted for not carrying out the orders of the Calcutta Corporation. I know Mir Kazem Hussen an Ammuktar of Syed Ali. He is bedridden by paralysis.

Cross-examined by pleader for plaintiff No. 2:—I entered service in January, 1924. I got no letter of appointment—I was appointed by Mutwali Syed Ali on the recommendation of the Manager on a salary of Rs. 30 recoverable after two months. I was to assist the Tehsildar in making collections. Kayem Hossain was then the Tasildar. He died probably in 1926. After his death I got his post as Tasildar. Before January, 1924 I was not in service of anybody. When I entered service there were no old papers. For the first time I prepared a daily book, then a list of properties and a list of tenants and then Jamabandi papers, in 1924 and 1925. Next I prepared the ledger in 1926 or 1927, Thokas being in 1925 or 1926. In 1927 M. C. Ganguly was appointed as an accountant. He did not start any new book except the ledger. In 1926 I did not realise rents from all the tenants of the Wakf Estate. From 1927 or 1928 rents were being collected from all the tenants. I lived at Hastings' Cooly Bazar for about 3 years, before 1924. Before that I resided for 5 years at Nazir Lane. Before that I lived in my native place at Sylhet. When I lived in Nazir Lane I was a student and used to coach boys. I make Tadbir in this suit for the daughters of Syed Ali. There are three rooms and a hall and a Verandah on the first floor of premises No. 11 Rangalal Street in the wing occupied by the Manager. There are three rooms, a privy, and a kitchen in the wing occupied by Juhi Begum. I formerly lived at premises No. 13/1, Pipe Road, after joining service. I shifted my residence to premises No. 11 Rangalal Street 4 years after I joined service—I live there all along since then. The portion occupied by the Manager may be let out at a monthly rent of Rs. 70 or 80. I cannot say that the room used as a mosque is an ordinary room. There are Meherap in it and other arrangements for prayers in that room. Alams and Patkas are kept in a small room contiguous to the Imambara. A list of assets and liabilities of the Estate was prepared after I joined service. It was caused to be prepared at my instance by M. Elias and Kayam Hossain. It is with the Mutwali. It is not filed by me in Court. The liabilities were ascertained to be Rs. 15,000 to Rs. 20,000 besides this there was litigation. Municipal taxes are paid Rs. 1,700 or Rs 1,800 quarterly. Khatija Bibi has preferred an appeal against the order of dismissal of her suit against Elias in the High Court. That appeal is still pending. I did not say in my deposition in that suit that I resided at

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premises No 123, Circular Garden Reach Road. I do not remember if I said then that 'the mosque is an ordinary room'. Syed Ali as Mutwali filed a claim in the Ex. Case No. 146/29 of 4th Sub-Judge's Court at Alipore in which Khatija Bibi attached all the properties of the Estate within Calcutta Municipality. I deposed for him in his claim case. I did not say then in my deposition that I served in the Estate since 1923. I never saw the payments to Juhi Begum shown by the receipts Ext. D series I cannot admit or deny that I was sentenced to 6 weeks' rigorous imprisonment. Besides that I was fined Rs. 100. I paid that fine I was in jail from 1 or 2 days before the end of January, 1931 to 4 or 5 days of March, 1931. I do not remember how long after disposal of the High Court Appeal preferred by me I went to jail. I was released on bail during the pendency of my appeal in the High Court. I did not attend that Court on the date of its judgment. Hanifa Bibi brought a Money Suit No. 89/1929 against Syed Ali and Juhi Begum in the local 2nd Munsif's Court. I cannot say without seeing the record of that suit that Juhi Begum's address was given as 11, Rangalal Street in that suit. I made Tadbir on behaif of Syed Ali in T. S. No. 120/30. I do not know if Juhi Begum's address was given there as 11, Rangalal Street. No objection was filed by Syed Ali to her address in that suit. I keep no accounts of the Wakf Estate. Ujir Ali's Kabuliat was not written in my presence but it was signed in my presence. I was not an attesting witness to it. Sum of about Rs. 23,000 was withdrawn by Syed Ali as Mutwali from the Improvement Trust after release of the attachment made at the instance of Khatija Bibi. He withdrew Rs. 1,000 and odd before the attatchment. Syed Ali had mortgaged the property before attachment with the permission of the District Judge. The mortgagee received Rs. 8,500 out of the compensation money in full satisfaction of his claim. The total compensation money was over Rs. 30,000. Syed Ali paid Rs. 13,000 or 14,000 as municipal taxes, out of Rs. 23,000 withdrawn by him and met litigation expenses and cost of repairs. I do not remember how much was paid by him on account of cost of repairs. The accounts were filed by him in the Court of the District Judge in Mis. Judicial Case No. 162 of 1929. The amount of municipal taxes exceed Rs. 20,000 including the cost of filling up a tank at premises No. 18 Kailasarak Road, which may be about Rs 6,000. I cannot say if it is Rs. 25,000. The municipality has brought several cases for arrears of taxes. Summons has been received by the Mutwali in 8 or 10 cases. The properties that appertain now to the Wakf estate are (1) Nos. 1, 35 and 36, Mominpur Road, (2) Nos. 7, 8A and 8B Ekbalpore Lane, (3) Nos. 3, 10, 7, 18 and 68, Ekbalpore Road, (4) Nos. 28, 30, 31, 32, 32/1 Dent Mission Road, (5) Nos. 1/1 and 3, Kailasarak Lane, (6) Nos. 6, 7, 11, 17, 18/1, 18 Kailasarak Road, (7) Nos. 1, 3, 6, Dent Mission Road, (8) Nos. 1/1, 2, 2/3, 2/4, Bhukailash Road, (9) Nos. 27, 28, 115, 123, 45 Circular Garden Reach Road, (10) Nos. 115/1, 120, 120/1, 121/1, 121/2, 122 Circular Garden Reach Road, (11) No. 11 Rangalal Street, (12) No. 28 Ram Kamal Street and (13) Nos. 14, 14/1 and 36, Watgunj Street which are subject matter of a suit, (14) a plot of land in Belati Bag at Lucknow. Litigation is pending regarding premises

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 75. Md. Makram Ali Munshi, witness No. 23.

Cross-examination for plaintiffs Nos. 1 and 1(a).

No. 18 Kailasarak Road. Syed Aii is in possession of premises Nos. 14, 14/1 and 36 Watgunj Street in respect of which litigation is going on. Only Ballygung property and No. 4 Koilasarak Road, were sold in Syed Ali's time. Sum of Rs. 90,000 was received by sale of premises No. 60, Ballygunj Road after release of the attachment made by Khatija Bibi, in April or May, 1931. Peshimam was first appointed in 1932 or 1933. Juhi Begum advanced Rs. 3,000 to the Mutwali before I joined service. I see it from the account papers. I cannot say who entered it in such papers as it was not done in my presence.

Cross-examined by counsel for plaintiffs Nos. 1 and 1a:—I came to Calcutta about 9 or 10 years before I entered service of the Wakf Estate. Then I started an agency for supply of crew to the ships. I still carry on that business. I earn Rs. 200 to Rs. 500 as commission for that business. This is my extra income. I have got two assistants in that business. I am a whole time servant of the Wakf Estate except the night time. All my knowledge of the affairs of that estate before 1924 is either hearsay or derived from the records. Some of those records are filed in Court. Juhi Begum did not appear before me. She was Purdanashin. No list of persons who attend the Majlishes or other ceremonies in the Imambara is kept. I attend such Majlises occasionally. Sum of Rs. 4 or Rs. 5 is spent for Newchandi monthly Majlises and Re. 1 or Rs. 2 is spent for the weekly Majlises at the Imambara when I first joined my service in 1924. Scale of expenses has increased since. I cannot say from which year. I cannot say the scale of expenses of such Majlises at the time of death of Syed Ali. It was Rs 2 for Thursday Majlises at that time. All such expenses are met by the manager and not by or through me, without permission of the manager no expenditure is made by me, with his sanction I spend some money on accounts such as Court expenses. There is no other class of expenses. Expenditure upon Koonda is made in the month of Rajab through the general agent Kazem Hossain and Syed Mahmud. I do not know the details of it. The Muharrum expenses are incurred through the same person. Similarly I cannot give the details of the Muharrum expenses. I cannot say the exact amount spent for Muharrum year by year or in 1930 or 1931. I can say it approximately as Rs. 800 to 1,200 as yearly expenses. I cannot give any details. The amount actually spent in 1924 was not less than Rs. 800 as will appear from the accounts of that year. The same reason applies to other years. Seeing the cash-book of 1930 witness says that sum of Rs. 999-15-6 was spent for Muharram in 1930. No details are given in it. But details are written therein as in vouchers. The vouchers may be in the office. I might have seen them. The amount was spent in my presence. Next says, I do not remember if I was present in the office when the amount was spent in that particular year. I cannot say if Kasem Hosain is a rich man. He received his salary from the personal fund of Syed Ali and not from the fund of the Wakf Estate. It may be Rs. 30 per month. Muharrum of 1930 fell in May or June. The amount was paid on 28th August 1930. Seeing the cash-book of 1930 witness says

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that no expenditure is entered therein on account of Muharrum in the months of May and June, 1930. Seeing the cash book of 1929 witness says that there is nothing entered therein except Rs. 7 spent on 6th June, 1929 on account of lighting the Imambara during the 9 days of Muharrum in 1929. Kasem Hosain the Ammukatar of Syed Ali used to take some advances from the Manager of the Wakf Estate for Muharrum expenses and to file his daily accounts of such expenses afterwards to him. The cash book does not show that any advances were made to him. It is correct that sum of Rs. 999-15-6p. was paid on 28th August, 1930 to him. I cannot say whether in 1930 any advance was paid to him. On 25th August, 1929 Rs. 12 was paid to Juhi Begum for interest on Rs. 1,200 which was the balance of the amount credited to her in the account. Sum of Rs 1,200 was paid on her death for her funeral expenses. It was not paid to her in her life-time. It is not shown by the cash books filed in this Court. It may be shewn by the cash book of 1931 filed in T. S. No. 10 of 1935 in 3rd Sub-Judge's Court. This money was not spent through me. So I cannot give the details of that expenditure. I say that the amount of Rs. 1,200 was spent for Juhi Begum's funeral expenses as I am aware of it being entered in the account book. Without seeing the entry I cannot say who wrote it.

N. Banerjee,

Offg. Sub-Judge.

9-5-35.

On defendant's petition the witness is re-called for further examination :— This is the cash book of 1931 written by Mahtabuddin Ahmad. I know his handwriting. He was a clerk of Wakf Estate. It was kept in regular course of business. It is marked Ext. U4. Seeing the cash book Ext. U4 witness says that on 27th March, 1931 sum of Rs. 25 out of Rs. 1,200 was paid to Juhi Begum, that on 13th August, 1931 sum of Rs. 581-8 annas was paid to Moulvi Kasem Hossain for funeral and other religious and ceremonial expenses of Juhi Begum. About Rs. 300 was spent on the occasion of her death anniversary in 1932 and Rs. 300 was paid to Syed Ahmad for the expenses of a pilgrimage to Karbala on her account. Such items are entered in the cash book of 1932. Seeing the chequemuri books of 1930 and 1931 witness says that the book of 1930 contains entries written by him, Manager Mahtabuddin and that the book of 1931 contains entries written by him and Mir Furshed Ali. I know their handwriting. The books are marked Exts. V11 and V12.

Re-examination.

Cross-examined by pleader for plaintiff No. 2 :—The cash book of 1932 is not filed in Court. It is surely in the office of the Wakf Estate. Cash books are prepared with reference to tax and rent counterfoils and vouchers of expenses. The vouchers remain in the eustody of the Manager. I was present when the Manager paid Rs. 300 to Syed Ahmad in 1932 for

Cross-examination for plaintiff No. 2.

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Evidence for defendants Nos. 3 & 4.

No. 75. Md. Makram Ali Munshi, witness No. 23.

pilgrimage to Karbala. Mir Kasem Hosain spent about Rs. 300 for the anniversary of the death of Juhi Begum in 1932. But I was not present then. Hanifa Bibi obtained a decree against her in Suit No. 89 of 1930 in local 2nd Munsif's Court. Kasem Hosain was not Mosahib of Syed Ali but his Ammukter. The Muktarnama was executed in my presence. I know the signature of Mirza Syed Ali—Ext. 6 bears his signature. Ext. 70 appears to bear his signature—Ext. 6 bears the signature of the Manager Mirza M. Zafar Shirazi. Juhi Begum left her husband and brother as her heirs. So far as I remember, the cash books of 1924-1926 are filed in T. S. No. 35 of 1932 of 2nd Addl. Sub-Judge of Alipore. Cash book of 1931 was filed in February, 1933 in T. S. No. 10 of 1935 of 3rd Sub-Judge's Court which was T. S. No. 119 of 1931 of 4th Sub-Judge's Court. The cash books of 1934 and 1935 have also been prepared. The cash books filed do not bear the signature of either the Manager or Mirza Syed Ali but they bear the seal mark of the latter as Mutwalli of the Wakf Estate. Cost of repairs per year was not less than Rs. 13,000 or 14,000. It is now Rs. 500 per month since 1929 or 1930 as the building has been thoroughly repaired. After making collections from the tenants I made over the amount first to Kasem Hosain Ammuktar, then to Syed Muhammad Ammuktar and now to Jafar Shirazi. M. Elias, Syed Masuddar Ali, Nurul Huq Chowdhury, Mahibur Rahman Chowdhury, Matabuddin Chowdhury, Mir Khorshed Ali were the successive clerks who wrote the account books since I joined service. The latter was appointed 2 or 2½ years ago more than 2 months before the death of Syed Ali. I do not remember in which year he joined service.

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N. Banerjee,

Offg. Sub-Judge.

9-5-35.

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Further-examination.

On defendant's petition the witness is recalled for further examination :— These are the cash books of 1924 and 1925, written partly by M. Elias, Syed Mosabbar Ali, Mohibur Rahman Chowdhury and me. I know their handwriting. The cash book is marked Ext. Q5. Mahibur Rahman Chowdhury who was clerk is no longer in service. M. Elias and Syed Mosaddar Ali are also not in service. The account book has been written in regular course of business. I do not remember the whereabouts of the account book of 1926. If it is not filed in Court it is in the office The rent counterfoil book of 1924 is written partly by Kayem Hosain, M. Elias, Syed Mosaddar Ali and me and signed by Kayem Hosain. It is marked Ext. V13. Ujir signed two of the counterfoils of this book. I know his handwriting. It is marked Exts. V14 and V15. The counterfoil book of 1925 is written partly by Mosadar Ali and me. It is marked Ext. V16. Syed Ali submitted an account about Rs. 90,000 to the District Judge.

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Cross-examination.

Cross-examined by pleader for plaintiff No. 2 :—Saheba Khatun did not possess any of the Wakf properties since 1924. I did not see her after

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joining service. She was to pay both the owner's and occupier's shares of taxes. Mirza M. Syed Ali received pension when I entered service; but how much pension he received I cannot say. Premises No. 18, Ekbalpore Road appertains to the Wakf Estate. Seeing the entry dated 2nd June, 1929 in the cash book of 1929 at page 60, witness says that it shows payment of Rs. 20 as expenses for turning out Saheba Khatun from premises No. 18, Ekbalpore. I did not see Saheba Khatun's G. P. notes. I took down the numbers of G. P. notes as dictated by Syed Ali Mutwalli. It was 5 or 7 years ago.

Cross-examined by counsel for plaintiffs Nos. 1 *and* 1*a*:—I know Mr. B. C. Ganguli pleader for defendants Nos. 3 and 4. The witness wants questions to be put to him in Bengali. Mr. Ganguli is one of pleaders of the Wakf Estate. I do not remember if he also acted as a pleader for Syed Ali during his life-time. I know Mr. Ganguli's handwriting. Seeing the duplicate copy of the plaint of Suit No 6 of 1934 of 3rd Sub-Judge's Court at Alipore witness says that it appears to bear the signature of Mr. Ganguli. Seeing the summons issued from the Court, I have no recollection of this suit having been filed by Syed Ali. On reference to the summons and the duplicate copy of the plaint I cannot say if I conducted any suit on behalf of Syed Ali. I knew Babu Ajoy Krishna Sarkar. There was litigation between him and Syed Ali in 1934. I heard of it from Syed Mahammad an Am-muktar of M. Syed Ali. I cannot say whether that suit continued after the death of Syed Ali or not. I do not know if that suit was withdrawn by the heirs of Syed Ali after his death or if it was dismissed for non-prosecution. I do not remember if I was a Tadbirkar on behalf of Syed Ali or his heirs after his death in that suit. I keep in my diary the numbers of all suits relating to the Wakf Estate. I did not refer to my diary at the time of giving my answer. I remember the numbers of suits relating to the Wakf Estate. I have not brought my diary book from my home. I can bring it within 5 minutes. The first item entered at page 1 of cash book of 1924 shows Rs. 16-2-6 pies as the balance on 31st December 1923. This shows that there was a book of 1923. It was a small exercise book. This book was filed along with other books in T. S. No. 686 of 1923 of 1st Munsiff's Court at Alipore renumbered as 6 of 1927 of Additional Munsiff's Court. That suit went on appeal to High Court. It related to premises No. 1/1 Kaila Sarak Lane. Syed Ali Mutwali was the plaintiff and the official assignee of the estate of Suprasanna Roy was the defendant in that suit. I cannot say if Mr. Suprasanna Roy was the purchaser from Saheba Khatun. I was a Tadbirkar on behalf of the plaintiff. I do not remember now what was the relief prayed for in that suit. The papers were filed in that suit in 1926 or 1925, but I cannot say it exactly. The account-books of 1924 and 1925 were also filed in that suit. I do not remember the accounts of which years were filed. No accounts of 1922 were filed. The accounts of 1 or 2 months of 1923 were filed. There were no accounts prior to November 1923, because there was then a lease to Sundarmull. So they

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Further-examination.

were not filed in Court. The lease to Sundarmull was cancelled in 1927 In July or August 1923 the High Court dismissed the appeal. I do not remember if any accounts were kept for the year 1923. I cannot say whether the lease to Sundarmull stopped all expenses of the Wakf Estate. I do not remember to have seen any accounts of the income or the expenses from 1917 to 1923.

N. Banerjee,

Offg. Sub-Judge. 10

10-5-35.

On defendant's petition the witness is recalled for further examination :— The entry dated 2nd June 1929 in the cash-book of 1929 at page 60 refers to 18 Ekbalpore Road which was let out to a European tenant. That tenant left and the house remained vacant and locked up for about 2 or 3 months. In next morning it was found by the Durwan that the lock had been broken in the night. On his report the manager and I went to Watgunj Thana and took Inspector Abdul Hamid to premises No. 18, 20 Ekbalpore Road and found a Durwan seated on the gate and came to know that Saheba Khatun was seated on the verandah. The Inspector asked the Durwan and Saheba Khatun to go out and asked them to take the help of Civil Court. She then left the place with her Durwan. Rs. 20 was spent for this matter. (The objections raised by plaintiffs 1 and 1a's counsel to the questions relating to the above answers are disallowed as the previous answer about the item of Rs. 20 requires explanation.—N. B.).

Cross-examination.

Cross-examination by pleader for plaintiff No. 2 :—The statement made 30 by me does not appear in the account-book. There is probably a note about the aforesaid incident in my diary book. The amount paid is not noted therein. It was paid by the manager. I do not remember at whose instance the entry in the cash-book was made. There are vouchers. I have no personal knowledge of the amount of expenses being actually Rs. 20. So far as I remember that was the sum spent on that occasion.

N. Banerjee,

Offg. S. J. 40

10-5-35.

Md. Makram Ali.

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On defendants Nos. 3 *and* 4*'s petition the witness is again recalled for further examination*:—I know the signature of Mirza Syed Ali. Seeing the typed written statement filed in T. S. No. 158 of 1920 witness says that it bears Syed Ali's signature. The written statement is marked Ext. EE.

Cross-examined by pleader for plaintiff No. 2:—I was not in service when the written statement was signed.

N. Banerjee,
Offg. Sub-Judge.
16-5-35.

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Evidence for defendants Nos. 3 & 4.

No. 75. Md. Makram Ali Munshi, witness No. 23.

Further-examination.

Cross-examination.

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No. 76.

Nos. 392-420—Deposition of Syed Md. Jafar Shirazi, witness No. 24 for defendants Nos. 3 and 4, dated the 10th May 1935, etc.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 76. Syed Md. Jafar Shirazi, witness No. 24.

Examination.

T. Suits Nos. 1 and 2 of 1934.

Deposition of witness No. 24 for the defendants 3 and 4 taken on solemn affirmation on 10th day of May 1935, before Babu Nikunja Behari Banerjee, 3rd Addl. Sub-Judge, Alipore.

My name is Syed Md. Jafar Shiraji, son of Aga Md. Mirza Kazim. My age is 55 years. I reside at 11, Rangalal Street, District 24-Parganas, where I am a Zemindar and also a service-holder.

I am a resident of Dacca. I am manager of the Wakf Estate since the end of September 1923. I have got a village in Barisal in Zemindary interest. I pay revenue to Government and rent to superior landlord. I have got a house and Bustee land in Dacca town. I have got an income of Rs. 7,000 or 7,500 from Barisal properties, but no income from Dacca property where my relations live. My pay is Rs. 200 per month. I reside at premises No. 11 Rangalal Street since my appointment. There are two wings in that premises with a compound. I reside on the flat on the right side on entering the gate. On the upstairs my family resides. On the ground-floor is our sitting room. In the other wing Munshi Makram Ali lives in the upstairs and in the downstairs the tenants reside. I knew Nawab Juhi Begum. She was residing at premises No. 28 Circular Garden Reach Road when I joined my post. She lived there all along till she removed to premises No. 123 Circular Garden Reach Road with her mother Amir Begum. The latter died on 28th January 1928, at premises No. 123 Circular Garden Reach Road. Juhi Begum continued to live there after the death of Amir Begum. In August or September 1929, Laddan Aga took her away from that premises. He is sitting in the Court room now. After that I never saw Juhi Begum in any of the houses at Kidderpore. I remember 1931. I stayed at premises No. 11 Rangalal Street till 1st week of March 1931 when I went to Barisal. I returned to that house again either in the end of April or on 2nd or 3rd May of 1931. When I came there Juhi Begum had died. In January or February 1931 or in the few days of March 1931 Juhi Begum did not live at premises No. 11 Rangalal Street. I gave evidence in M. S. No. 89 of 1930 in 2nd Munsiff's Court at Alipur, which was brought by Hanifa Bibi against Syed Ali and Juhi Begum. At the time of trial of that suit Juhi Begum was not living at premises No. 11 Rangalal Street. I have seen premises No. 4 Rangalal Street in Hindu locality. Juhi Begum

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

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No. 76. Syed Md. Jafar Shirazi, witness No. 24.

never resided in that house on 29th January 1931 or in house No. 11 Rangalal Street on 19th January 1931. I know Nawab Hasem Ali Khan who is present in this Court room now. When I joined service I found him living at premises No. 28 Circular Garden Reach Road. One or two months after I joined service Hasem Ali Khan left for Lucknow with Juhi Begum in 1923. The latter returned to premises No. 28, Circular Garden Reach Road in 1924, but Hasem Ali did not accompany her. Hasem Ali Khan came to premises No. 28, Circular Garden Reach Road in 1926 April. In that April, I was sent for by Juhi Begum through a maid-servant. She complained to me behind a Purdah that she had been beaten by her husband Hasem Ali Khan and showed her cheek and asked me to inform the police and bring a case against him. I advised her not to do so and left the place. Then she sent for a Gharry to go to the Thana herself. I had the carriage sent away as it won't look well. Hasem Ali Khan had left premises No. 28 Circular Garden Reach Road for Prince Sultan Mirza's place at Watgunge. I went to latter's place and met Hasem Ali Khan there in the evening. I informed him that Juhi Begum was very angry with him as he had assaulted her but I dissuaded her from bringing a criminal case against him. Hasem Ali Khan told me that it was he who was first ill-treated and he gave a description of the quarrel and told me that he had gone to house No. 28, Circular Garden Reach Road but was driven out by Durwans. From that time he never came to that house and I never saw him in Kidderpore. After that I received a letter from him, which is filed in Court. This is the letter Ext. J. The word 'দাওয়াই' (Daoyai) mentioned in the letter I understood to mean cocaine. I did not see Juhi Begum take cocaine. Since I joined the service I saw Syed Ali Mutwalli in possession of the properties. At that time the lease of Sundarmull continued. That lease was cancelled in April 1923 by the High Court. I do not remember the date. On the setting aside of that lease Syed Ali Mutwalli remained in possession of the Wakf properties. From 1923 when I joined service Amir Begum or Juhi Begum was never in possession of any of the Wakf properties. There is a garden at Lucknow appertaining to Wakf Estate. It is possessed by Mutwalli through tenants Assanulla Khan and Wahed Ali Khan. They executed registered Kabuliyat. They have paid rents to the Wakf Estate.

N. Banerjee,
Offg. S. J.
10-5-35.

Further-examination.

Further examined :—I took the letter Ext. J to Juhi Begum. I read over the letter to her. She said that the medicine that was referred to the letter was taught by him and she did not inform him of any intended visit on her part. She requested me to write to him that there was no necessity of his coming to her nor she had no intention of going to him. I did not write to Hashem Ali any letter as requested by her. Whatever accounts that existed prior to 1924 were taken charge of by the curator appointed

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by the District Judge. The expenses of the Wakf Estate from 1919 to 1923 were met by Syed Ali from his personal fund as I learnt from the accounts which were written in Urdu. These accounts were with Syed Ali in the upstairs and probably with his widow after his death. The payments after I joined service were made under the orders of Mutwalli after keeping vouchers. The income remained with the Mutwalli and his Muktear Kasem Hossain and before the latter with Mahammad Mirza and towards the end of Syed Ali it used to remain with Syed Mahammad his Ammuktear. In the Wakf the following ceremonies are observed *viz.*, (1) Moharrum, (2) Nawchandi Majlises, (3) Thursday Majlises, (4) Eftari given during the Ramjan, (5) Koonda is performed in the month of Rajab, (6) Nauraj, (7) Korbani or Bakrid, Majlises are held on 3rd, 4th, 5th, 6th, 8th, 12th, 20th, 30th, days of Mohurrum. On the 20th day of Safar, Majlises are held which are attended by the public. Zarih procession is issued on 2nd day of Muharrum from 11, Rangalal Street to 123 Circular Garden Reach Road when it is kept in the Imambara. On the 7th day of Mohurrum a Mehedi procession is issued. On the 10th day another procession is issued from 123 Circular Garden Reach Road to Matiaburz. At premises No. 123 Circular Garden Reach Road there is a mosque in the downstairs and Imambara in the upstairs. Hisyas are distributed in every Majlis. All expenses are entered in the account-books. Syed Ali never took any allowance from the Wakf Estate so long as he was alive. Amir Begum used to get Rs. 100 per month from the Wakf Estate and grant receipts. These are the receipts granted by Amir Begum. The body of receipt bearing Ext. E is written by Mahammad Mirza. It bears my initial and the seal mark of Amir Begum. I know the handwriting of M. Mirza. The receipt is marked Ext. E11. The receipts bearing Exts. E1 to E10 are written by Mahammad Mirza and bear my initials and the seal marks of Amir Begum. The receipts are marked Exts. E12 to E21. All the payments shewn by these receipts were made in my presence. Juhi Begum also used to get an allowance of Rs. 50 per month from the Wakf Estate after the death of Amir Begum and grant receipts. The receipts bearing Exts. D to D2 are written by Mahammad Mirza and bear my initial. They are marked Exts. D3 to D5. These two receipts are written by a clerk Mustafa and bear my initial. They are marked Exts. D6 and D7. All these payments were made to Juhi Begum in my presence. Syed Ali Mirza died of paralysis. He was attacked with paralysis towards the end of 1932. At first he was under the treatment of Syed Ahmed. Then he placed himself under the treatment of Dr. Bidhan Roy. A Commissioner was appointed to examine him on commission. But his evidence could not be taken on commission after one sitting. Dr. Bidhan Roy granted a Medical certificate. He signed the typed certificate in my presence. It is marked Ext. Y. Syed Ali was treated by Dr. Nalini Sen Gupta from March 1934. He died on 11th June 1934. From before January 1934 he was not in a position to understand a document. Mahammad Mirza is dead. Mustafa has left service. I have read the Wakfnama. Only three of its attesting witnesses are alive *viz.*

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No. 76. Syed Md. Jafar Shirazi, witness No. 24.

Cross-examination for plaintiffs Nos. 1 and 1(a).

Subdar Jah, Mirza Abed Ali Bahadur, and Mufti Saheb. In 1924, or 1925, Board of Trustees was first appointed.

Cross-examined by Counsel for plaintiffs Nos. 1 *and* 1*a*:—I understand English but I am not in a position to depose in English. I read up to Matriculation standard. I did not pass that examination. I first read in Dacca School upto class VIII. in 1900. I read at Aligarh in 1901 and 1902. I did not appear at Matriculation examination owing to illness. I left my studies in 1903 but I do not remember the month. I do not remember the month in which the Matriculation examination was held in 1903. I did no business after I left my studies. I did not serve any body before I entered the service of Wakf Estate. I do not know survey. I have been to Calcutta for the last 35 years. I came to Calcutta for the first time to visit the city. I have also some relations here whom I visited. I do not remember the year or the month when I first came to Calcutta. I do not remember the season then. I usually come to Calcutta during the cold weather. Before my appointment in 1923 I had last visited Calcutta in 1922, probably in cold weather. I cannot say the month. I stayed for 2 months in 1922 with Sir Abdulla Suhrawardy. I know him from my childhood. He lives in my Mahalla. His house is contiguous to mine. I have not studied accountancy or book-keeping. My property in Barisal and Dacca is inherited by me from my parents who were co-sharers in respect of it. My father was a Zemindar and a tenure-holder in respect of the village Titkata in Barisal district. I cannot say without reference to papers what amount of revenue was paid by him for his share of Zemindary property which is in permanently settled estate. My father's share was not separated by partition. My step-brother had also a share along with my parents, in the village Titkota as a Zemindar. Shyamlal Chowdhury was their co-sharer in Zemindary right. I do not know what was the land revenue of the village Titkota. It was Rs. 1,700 or 1,800 payable in the shares of my parents and step-brother. Their three shares formed a Mehal. Its name is Titkota. This amount included cesses. I cannot say how much of it was revenue and cesses. I cannot say the extent of shares of my parents or step-brother. My step-brother inherited the share from his mother. She did not belong to the family to which my mother belonged. My parents and step-brother are dead. I do not know how my step-brother's mother became a co-sharer of the property. The share of my step-brother is possessed by his son by a Hiba-bil-Ewaz. There was joint management of all the three shares during the lifetime of my father. My father died in 1914. I do not remember the exact date or month. My mother had predeceased my father. I do not remember the year of her death as I was then 1½ years old and as she died 53 years ago. My step-brother died in 1912 after the death of my mother. My mother died leaving four heirs *viz*, a husband, two sons and a daughter. My father left only myself and my sister as his heirs, my full brother having predeceased him. My sister is dead. She has left four sons. She had given a permanent lease of her share to me. I cannot say what is the

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amount of land revenue I have to pay for my and her shares. My sister's share was $\frac{1}{3}$rd and my share is $\frac{2}{3}$rd. I do not remember the year in which I took lease of my sister's share. I do not know whether the road-cess in my village is assessed upon the rent roll. I cannot say what is the amount of road-cess I have to pay, without reference to papers. My Tahsildar manages my estate. I pay Rs. 1,100 or 1,200 as land revenue and cesses in respect of my share and my sister's share. This includes what I pay to the superior proprietors Shyamlal Chowdhury and his brothers. I cannot say what is the amount of rent payable to the superior proprietors and what is the revenue payable to Government. The income of the land for which I pay rent to the superior proprietors is Rs. 8,000 or Rs. 9,000. This is not the income of the land only for which I pay rent but is the total income of that land as well as the land for which I pay revenue to Government. I cannot say without reference to papers what is the income from the land for which I pay rent to the superior proprietors or from the land for which I pay revenue to Government, as the matter is in the management of my Tahsildar. I do not know Mirza Mahammad Toki Shiraji. There are many persons bearing that name. There are two merchants of that name in Calcutta whom I know. Mirza Mahammad Toki Shirazi has no relationship with me. The amount of rent reserved in the lease by my sister is Rs. 150 a year. Amir Begum and Juhi Begum observed Purdah. I never saw or heard that Juhi Begum appeared before Ujir Ali. The male servants of premises No. 123 Circular Garden Reach Road did not enter the Zenana. I did not see them do so. I do not recollect the exact date on which I left for Barisal in March 1931. I have seen Munna Aga brother of Laddan Aga once or twice. Probably in 1929 I saw him last when the claim case instituted by Khatija Bibi was pending. The latter obtained a decree and attached the Wakf property alleging it a share of Juhi Begum in 1929. Munna Aga had come with the people who were beating the drum for attachment on behalf of Khatija Bibi and Hashem Shaleji. I did not leave Calcutta in 1929 after I joined my appointment. I do not remember if I left Calcutta in 1924. Perhaps I may have gone to Dacca to attend the Muharrum. The same may be said about my going out of Calcutta in 1925. I remember that I went to Barisal in 1926. I do not remember the month but it was in winter. I do not remember the date or month of my return but I returned after about 2 weeks. I did not go out of Calcutta in 1926. I went to Dacca for 8 or 10 days during Muharrum in 1927. I cannot say the English month or date of my going out or return. I did not go out at all in 1928 or 1929 or 1930 or 1932 or 1933 except in March, 1931 as already stated by me. I went out in first week of February, 1934. Perhaps it was in the middle of May, 1934 that I returned to Calcutta. Seeing receipts Exts. D4 and D5 witness says that they contain his order for payment. The order is to be carried out by Mutwalli through me at premises No. 123, Circular Garden Reach Road. It was written out by me in my office at that premises. The Mutwalli also lived at that house then. There is no order for the Mutwalli for payment in the receipts Exts. D4 and D5. I did not note

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on the receipts that the payments were made by me in my presence as I did not consider it necessary. The English writing below the stamp in these receipts is to the following effect—the above thumb impression of Jinnat Ara Juhi Begum is put before me. It is perhaps in the handwriting of Makram Ali. The stamps are not cancelled. I cannot explain why the thumb impression was not put on the stamps if they were affixed on the receipts before they were signed. I am not sure whether the English writing is in the hand of Makram Ali. Seeing the receipt Ext. D3 witness says that the facts regarding it are the similar to those regarding receipts, Exts. D4 and D5 but now it appears to him that the English writings below the stamps in Exts. D3 to D5 are those of Nurul Huq and not Makram Ali. There is no date written below the order for payment in Ext. D3 as in Exts. D4 and D5. The stamp in Ext. D3 is not cancelled as in Exts. D4 and D5. Similar is the case with the receipts Exts. D6 and D7. Ext. E11 contains the word 'seen' and my initial and date in my handwriting at the left hand bottom corner. At first I used to write the word 'seen' in the receipts but I afterwards wrote the word 'pay' on them. My object in writing those words is the same. The receipt Ext. E11 bears date 16th January, 1927 but my endorsement of it is dated 24th January, 1927. It may be that the money was paid on 24th January, 1927 and not on 16th January, 1927. I cannot say it definitely without reference to the accounts. The accounts will show whether there was payment as shewn by the receipt. There was no report to show the payment. The cash book Ext. U of 1927 shows the payment actually made on 16th January, 1927. There is a note in red pencil in English referring to Voucher No. 34B dated 16th January, 1927. It does not appear from the receipt that it was produced before me 8 days after the date of payment. Seeing the receipt Ext. E13 witness says that it bears the word 'seen' with his initial and date. It is not a fact that regarding the date the digits '11' were changed into one digit '9'. It does not appear to me. Seeing the receipt Ext. E15, witness says that it bears the date 4 or 14-4-27 below his initial and the word 'seen' and from the date it is not clear whether it was 4 or 14-4-27. At first some wrong date was written which was altered to 4 or 14-4-27. This receipt Ext. E15 refers to voucher No. 187D dated 11th April, 1927 or 4th April, 1927. On referring to the cash book Ext. U of 1927 witness says that he feels sure now that the payment was made on 11th April, 1927 regarding the receitpt Ext. E15 and that the figure below my initial it cannot be '4'. Seeing receipt Ext. E16 witness says that the date below my initial is 21st May, 1927 although figure '1' is blurred by drop of ink and that it was not a different figure altered to '21'. Seeing receipt Ext. E18 witness says that it contains his initial with the word 'seen' in his handwriting without date and it bears the payment order written by him also. It is not a fact that I wrote the word 'pay' with my initial on receipts before the actual payments and also the word 'seen' with my initial therein after the payments. I wrote the word 'pay' sometimes and the word 'seen' sometimes in the receipts before actual payment. I can give no other explanation in writing both the words in the same receipts. None

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of the receipts is attested. I have never seen a receipt attested anywhere The payments shown by receipts were made by the Mutwalli in my presence and not by me. For all payments made by him he used to call me It was his pleasure to call me at the time of payments to his mother and sister. Premises No 11, Rangolal Street was unoccupied when I joined my post in 1923. I had never seen that premises before my appointment. When I came in September, 1923 one wing of that house was occupied by a Muktear tenant of Saheba Khatun named Indra Babu. This wing is now occupied by Munshi Makram Ali on the first floor only. I do not know what rent was paid by the Mukhtear.

N. Banerjee,
Offg. Sub-Judge.
11-5-35.

Further cross-examined :—My duties as a Manager were as follows:—(1) checking of accounts, (2) making Tadbirs in cases and holding consultations with lawyers in cases relating to Wakf Estate, and (3) sometimes to make payments, as often payments were made through me. Most of the payments entered in the cash book were made through me. I mean that the Mutwalli used to make payments to me for making payments to others Sometimes the Mutwalli used to pay to the Ammuktear for payments of Muharrum expenses with regard to Court expenses. Mutwalli used to pay to the Munshi Makram Ali through me. Besides these the Mutwalli used to make some payments. I do not remember any particular expense which he incurred himself. I do not remember if there was any other mode of incurring expenditure in regard to the Wakf. All expenses were incurred according to Mutwalli's orders. There was no general or standing order issued by him. He used to make particular order with regard to every item of expenditure. Sometimes he used to send for me and sometimes I went to him for orders. I never made a note myself of any item of expenditure. The clerk was there to make such notes. Immediately after payment of every item of expenditure the clerk used to enter it in the cash books which are filed. It was not entered in any other book before its entry in the cash book but there was a voucher for every payment. I used to check the accounts with reference to the vouchers. There is no signature of mine in the accounts to show that they were checked by me. There is nothing in the cash books filed to show that I have checked them. I was a Tadbirkar first of all in the criminal case against M. Elias regarding premises No. 4, Kailasarak Road. This case was going on when I joined service as Manager. The case had commenced about one month before I joined my service, so far as I remember. This complaint was brought by M. Elias against Kayem Hosain Tasildar. The latter stopped throwing of cinders upon the marshy land at No. 4 Kailasarak Road. I do not remember all the particulars as it was a matter of 12 years ago. That case was disposed of in 1924. I do not remember the date or month of its decision. The Tadbir I made in that case was about the point that the property No. 4

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Kailasarak Road that stood in the name of Amir Begum really belonged to the Wakf Estate. I pleaded this in that case in my written statement. That was the defence taken by Kayem Hossain in that case and not by me. I made Tadbir in that case on behalf of the accused Kayem Hosain. I attended the Criminal Court and produced witnesses who gave evidence on behalf of the accused. I do not remember the names of witnesses examined by the accused in that case except two named Jabbar and Hossain Mia. The written statement was filed in 1923 after I entered service, so far as I remember. Besides myself, M. Elias clerk also used to look after the case on behalf of the accused. The next case in which I made Tadbir was the dower suit of Haji Alabux. It was disposed of in 1928. I used to attend the hearing of this case all along. I do not remember the month of its disposal. It was disposed of in the middle of 1928. That case was dismissed on compromise. I keep a diary book. I do not enter in it my works relating to the Wakf. Only the dates of cases relating to Wakf Estate only are noted in it. It relates to Wakf Estate only. It is written sometimes by my clerk and sometimes by myself. I got some papers relating to the Wakf Estate when I joined service. They are as follows :—*viz.*, list of tenants with the area of land occupied by each and the rent and tax payable by him. I received no other paper. I was told that all other papers were with the curator. This list was in Bengali in loose sheets of papers and not in a bound book. I saw a list of papers filed by the curator but I do not remember now what those papers were. I saw it in the Court of the District Judge where the curator's case was instituted. That case was disposed of before I joined service. Some of those papers were taken back by me and Shaheba Khatun and some are still lying in Court. All those papers were taken over by the curator from the premises No. 60 Ballygunge Road, immediately after the death of Prince Kamar Kader. I made an attempt to get back the papers from that case after my appointment. I cannot say the date or month or year when I got back some of the papers. I do not remember when I got back these papers on single occasion or on several occasions. I do not remember whether any papers remained in Court after Shaheba Khatun and I got back our papers. I do not remember whether I have filed in this case any of those papers. I do not remember the date of month when Syed Ali was attacked with paralysis in 1932. I do not remember upto what month he was treated by Hakim Syed Ahmed, but he treated him for 2 or 3 months. I do not remember the date from which Dr. Bidhan Roy commenced his treatment in 1933. There was no board of trustees in 1923 when I was appointed. There is its proceeding book. It will show the proceeding of the meeting held for appointment of trustees. None of the tenants of the Wakf Estate executed Kabuliyat in favour of Amir Begum and Juhi Begum. I do not remember if Jiten Tamoli is one of the tenants of the property in suit on Bhukailash Road. So far as I remember, he has not executed any Kabuliyat in favour of Amir Begum. There was a doctor Soleman a tenant of No. 7 Kailasarak Road. He is dead. I cannot say if he executed any Kabuliyat in favour of Amir Begum. Abdul Jabbar was one of the tenants on No. 6 Kailasark Road. I do not know if he executed any Kabuliyat in favour of Amir Begum. Abdul

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Aziz is also a tenant in that premises. He is payable(*sic*) rent to me. I do not know if he executed a Kabuliyat in favour of Amir Begum. I do not recollect any tenant named Atul Chandra Modak in Bhukailash Road. I do not know if he executed any Kabuliyat in favour of Amir Begum or Juhi Begum. Nafar Mukherjee is a tenant of the Wakf Estate. I do not think that he has taken a Patta from either of them. He paid rents all along to the Wakf Estate till his death Now his son pays rent. I made an enquiry when I was appointed to find out how much rent was due from each tenant. A list of arrears was prepared by Makram Ali under my direction in 1924, I do not recollect what was the amount of arrears found to be due at that time. I cannot say it even approximately. When I joined my service in September 1923, I heard of Sundermull collecting rents but I did not see him do so. I do not remember how long after my appointment he collected rents. I do not remember if I collected in October 1923 the whole of the rents due for October 1923. Similarly I do not remember if the whole rents were realised in November and December 1923. Some tenants during my time objected to pay rents to me on the ground that they had paid them to Sundermull. I do not recollect to have seen any rent receipts granted by the latter. I have not seen the Lucknow Grove. No Patta was given by Syed Ali to Esanulla or Wahed Ali in respect of that grove. He never gave any Patta to any tenant. The Kabuliyat was not executed in my presence. Since 1924 I used to go to premises No. 28, Circular Garden Reach Road to meet Loddan Aga and Hasem Ali Khan. I had no other reason to go there.

Cross-examination for plaintiff No. 2.

Cross-examined by pleader for plaintiff No. 2:—I knew that Juhi Begum had deposited some amount with Syed Ali in Wakf Estate but I do not remember the amount. It was a loan of the Wakf Estate from Juhi Begum and she used to receive interest on it. Part payments of the principal of that loan were also made to her. I do not remember if they were made by instalments of Rs. 50 each. I can say it on reference to the accounts. Sum of Rs. 50 was paid to her as allowance from Wakf Estate from February, 1928 and interest at the rate of Rs. 30 was paid to her. Seeing cash book of 1927, witness says that sum of Rs. 50 was paid towards (*sic*) to her towards the loan on 13th August 1927, 29th September 1927, and again on 16th November 1927 on account of the principal. Some portion of the loan was due to her at the time of her death and remained unpaid. There were very good feelings between Juhi Begum and Syed Ali when the former came with her mother to live with him in premises No. 123, Circular Garden Reach Road in 1927. Amir Begum was also on good terms with Syed Ali then. So long as they lived there there were good feelings among them. It may be that the seal and other articles of Amir Begum remained with Syed Ali after her death. After the death of Syed Ali the amounts of collection remained with the Mutwali. After his death the collections were made by Makram Ali. The latter deposits his daily collections with me. Some money is kept by me for expenses. Some money is made over by me to Jahanara Begum Shaheba, Keshwar Ara Sadiqa Begum Saheba in the presence of their husbands. I do

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not take any receipts from them for such payments. There is no book to show the payments made to them or the amounts kept by me but they were noted in slips which are torn off. By Madkula wife is meant a wife who is herself illegitimate. I did not think myself liable to render accounts to Syed Ali. The latter never asked me to render accounts to him. He used to see the accounts himself, once or twice or thrice a week that were in the office. During the lifetime of Syed Ali Makram Ali used to make collections and deposit the amounts with him sometimes or with the Ammuktear Kazem Hossain and after him Syed Mahammad. Syed Ali appointed me as Manager of the Wakf Estate. I got an appointment letter from him but I cannot say where it is now. There is no book to show what amount falls into arrears as Municipal taxes. The amount of the Municipal taxes payable for the Wakf Estate is in arrears to the extent of Rs. 15,000 or Rs. 20,000. There is a book showing the total arrears of rent due at the end of each year. There is no separate book except the cash book from which it will appear that which house is repaired or what is the amount spent for its repairs. It is true that all amounts whether on account of rent or loan are entered in the cash book every day. Amounts received on any other accounts are also entered in it on the day of their receipt. Seeing cash book of 1929 witness says that it shows payment of Rs. 30 as interest on a loan of Rs. 600 taken from Syed Khan Kabuli for August, 1929 at the rate of 5 per cent per mensem and the loan taken on 18th May, 1929 and that it does not show the loan of Rs. 600 taken from Syed Khan Kabuli on that date on the credit side but it shows a loan of Rs. 600 taken from Alamjan and others on the credit side on that date. Syed Khan Kabuli is one of those creditors. Syed Ali got Rs. 40,000 as Selami from Sundarmull for his lease but I was not present then. Out of that Rs. 30,000 was invested in war bonds and deposited in District Judge's Court and the balance was taken by Syed Ali. When the lease was cancelled Sundarmull brought a suit for recovery of Rs. 1,98,000 against Syed Ali but it was compromised for Rs. 30,000. He withdrew that money from the District Judge's Court in full satisfaction of the decree. There was a T. S. No. 24/-5 in the 4th Sub-Judge's Court at Alipore by M. Elias against Syed Ali and others. I used to look after that suit on behalf of Syed Ali. Subject matter of that suit appertained to the estate of Kamar Kader. The suit was compromised with the permission of the District Judge. Syed Ali sold away his interest to Elias by a Kobala with the permission of the District Judge for Rs. 10,000. He received the amount in 1925. I do not remember the month. In this way one of the properties left by Prince Kamar Kader has gone away. In Haji Alabux's case against Syed Ali, I looked after it on behalf of the latter. That case was dismissed on compromise. Haji Alabux did not obtain a decree for Rs. 35,000 against Syed Ali in that suit on compromise. But there was a deed between them for payment of Rs. 35,000 and other debts. Syed Ali sold premises No. 60 Ballygunge Circular Road for Rs. 90,000 in 1931, with District Judge's permission. Rs. 35,000 was paid by Syed Ali to Haji Alabux for the cost of that litigation. The original plaintiff in that case was Shah Bahnu(?) Nawab Amir Begum. When she withdrew from the suit Haji

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Alabux was substituted for her. I do not remember why it was so Amir Begum mortgaged her claim for dower against Prince Kamar Kader to Haji Alabux. It may be that she brought that suit for recovery of her dower. I saw the plaint of that suit. Premises No. 60, Ballygunj Road went out of the Wakf estate. Premises Nos. 55 and 55/1, on Diamond Harbour Road and a plot of land at Metiaburz measuring 5 or 6 cottas were acquired by the Calcutta Improvement Trust. These three properties thus passed out of the Wakf estate. Syed Ali withdrew the compensation money in respect of these three properties. Litigation is going on regarding premises Nos. 14, 14/1, and 36 Watgunj Street between Syed Ali and the heirs of Sir B. C. Mitter. There is no property standing in the name of Sarifannesa Bibi appertaining to the estate of Prince Kamar Kader. I made enquiry about premises No. 12 Ekbalpore Road. It does not appertain to the Wakf estate. Premises No. 1/1, Koylasarak Lane appertains to the estate of Prince Kamar Kader. A litigation is going on between Syed Ali and Marwari Hatmul regarding that property. Latter's allegation is that he has purchased it from the official assignee. Before I joined service the criminal case between Y. Kasem Arif and Syed Ali regarding two properties at Tollygunj was disposed of. When I joined service those properties were acquired by Improvement Trust. Syed Ali applied for compensation money but his claim was rejected on the ground of limitation. The compensation money was taken by Yusuf Kasem Arif. These two Tullygunge(*sic*) were included in the lease granted by Syed Ali to Sundermull. The latter neglected. Premises Nos. 4 Koylasarak Road and 1/1, Koylasarak Lane, were in the name of Amir Begum. I cannot say whether the latter property was sold in auction. The property was purchased with the money of Prince Kamar Kader in the name of Shaheba Khatun. Premises No. 2, Dent Mission Road stood in the name of Amir Begum. As we failed to prove the Benami owing to necessary papers being taken away by Jnan Babu it was taken by Amir Begum's creditor Yakub Kasem Ali and we have lost the High Court suit. I was not present when Jnan Babu took away the papers. He took the papers before my service. It is my hearsay. The Wakf estate has purchased the mortgagee's interest from Ahmad Mamuji Amulia in 1931. The mortgagor was Yakub Kasem Ali. It may be that the subject matter of the mortgage was the decree obtained by Kasem Ali against Amir Begum. I saw the deed of sale in favour of Syed Ali. The political pension of Syed Ali was Rs. 300 per month. I am looking after this case on behalf of the daughters of Syed Ali. My office is at premises No. 123 Circular Garden Reach Road. There are two closed rooms above the room which is used as mosque. They are vacant and locked up. Rangolal Street is on the west of the western wall of the mosque. On the east of the eastern wall and on the north of the mosque is the court-yard of premises No. 123 Circular Garden Reach Road. On the south of the mosque is premises No. 122 Circular Garden Reach Road. The room of the mosque is not parallel to the directions. The western wall of that mosque points towards the Kaaba. I looked after the Suit No. 120 of 1930 of 4th Sub-Judge's Court on behalf of Syed Ali. I do not remember, next says, I remember that Kazem Hosain deposed in that suit on behalf of Syed Ali

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in my presence. He was servant and Am-muktear of Syed Ali. He is attacked with facial paralysis. He is in Lucknow but I do not (know?) his present address. I cannot say for what purpose he said in that suit. 'The mosque is a room like the Imambara and the room which I have called mosque was built along with other parts of the house'. This statement of that witness is correct. The room was converted into a mosque. He made a mistake in saying that the walls of the house did not point towards *Kaaba*. There are earthen jars containing water near the Mosque for ablution but I do not remember their number. Mosques point towards the *Kaaba*. I attended congregation prayers in a Mosque. The Imam stands first. Others stand behind him in rows, all facing towards the *Kaaba* and the rows being parallel to each other. The Imam stands facing the arch and his followers stand behind him parallel to the arch. The arch is attached to the western wall of the Mosque. Darapin lands of Alipore Collectorate appertain to the Wakf Estate. There are two such holdings. For them rents are payable at Rs. 42½ and Rs. 82-4-9p. annually. Moulvi Ibne Imam and Babu Satish Chandra Ghose are pleaders of Wakf Estate. No retaining fee is payable to them. The former deposed in the case of Hanifa Bibi against Syed Ali for the latter. I cannot say on which side of the Mosque is a latrine. The latrine stands at a distance of about 12 cubits from the Mosque. I do not remember if I pay any income tax.

Re-examination.

Re-examined:—The deed was executed by Syed Ali in favour of Haji Alabux with the permission of the District Judge.

N. Banerjee,
Addl. Sub-Judge.
13-5-35.

On defendant's petition the witness is recalled for further examination:—On 10th December, 1933, Dr. Bidhan Roy gave a medical certificate to Syed Ali. He wrote and signed it in my presence I know his handwriting. Proves certificate Ext. Y1. I know Prince Kamar Kader's English signature. Seeing the affidavit filed by latter on 5th(?) November, 1918 in insolvency case witness says that it bears Kamar Kader's signature. The signatures are marked Exts. BB to BB2, I do not know the signature of Abinash Chandra Pal.

Cross-examination.

Cross-examined by pleader for plaintiff No. 2:—I saw Prince Kamar Kader write when I got a certificate from him in 1916 as I was a candidate for the Mutwalliship of Hooghly Imambara. I did not try for the Mutwalliship of any other place. I was acquainted with Kamar Kader from before 1916. I cannot say in which year I first became acquainted with him I cannot say on what occasion. A year or two prior to 1916 I became acquainted with him. I was acquainted with all the Prince's sons of Ex-king of Oudh. I cannot say in which month I got the certificate. That certificate may be at my house

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at Dacca. I did not obtain any other certificate or writing from him. Besides that he never wrote in my presence. He granted the certificate in premises No. 123, Circular Garden Reach Road. I do not remember in which place I met him in the Majlis. I saw him only once in a Majlis. It was 1 or 2 years before 1916. After the certificate I did not meet Prince Kamar Kader. Prince Mokim took me to him for the certificate, as far so I remember. On that day I obtained the certificate. It was written by Kamar Kader's man. It was signed by him. Asrat Ali, C. I. E., was the Mutwalli of Hooghly Imambara when I was a candidate for the Mutwalliship. His Mutwalliship ceased in 1917. It was given to the man elected by members of the Committee. Moulvi Raziuddin was elected as Mutwalli. I had no occupation in 1916 when I was living at Dacca. I used to look after my Zemindary then.

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Cross-examined by Counsel for plaintiffs Nos. 1 *and* 1*a*:—I made enquiry as to who was recorded as the person in possession of the grove at Lucknow, in the revenue papers. I did not obtain any copy of that record. Next says, I made no such enquiry. I cannot say whether Syed Ali made an enquiry. I do not know whether any application was made by him for mutation of his name as Mutwalli after expunging the name of Juhi Begum. I do not know if any pleader was appointed at Lucknow on behalf of Syed Ali for that purpose.

Cross-examination for plaintiffs Nos. 1 and 1(a).

N. Banerjee,
Offg. Sub-Judge.
14-5-35.

Mirza Md. Jafar Shirazi.

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Nos. 421-428.—*Deposition of Mr. Mofazzelur Rahaman, witness No.* 25 *for defendants Nos.* 3 *and* 4, *dated the* 14*th May,* 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for defendants Nos. 3 & 4.

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No. 77. Mr. Mofazzelur Rahaman, witness No. 25.

Deposition of witness No. 25 for the defendants 3 and 4, taken on solemn affirmation on the 14th day of May, 1935, before Babu Nikunja Behari Banerjee, 3rd Addl. Sub-Judge of Alipore.

Examination.

My name is M. Rahaman, son of late Munshi Himayetulla. My age is 41 years. I reside at 9, McLeod Street, Calcutta, District 24-Parganas. My occupation is pleadership.

20 I am a pleader of Alipore Bar. I commenced my practice in 1919. I remember M. S. No. 29 of 1936 in which Francis Higgins Spell the plaintiff and Nawab Shah Baher Amir Begum and others were the defendants. I appeared for Nawab Amir Begum in that suit. Seeing the Wakalatnama witness says that it was accepted by him, that it bears the seal mark of Amir Begum and her name through the pen of Nawab Jan and that the endorsement on its back is in his handwriting and its body is in printed form and the manuscript portion of it is in his handwriting. It is marked Ext. Z and the endorsement on its back is marked Ext. z1. I filed a written statement on behalf of Amir Begum. This is the written statement in typed form. It 30 bears the seal mark of Amir Begum. Her name is written by Nawab Jan. The verification is written by me. I explained the written statement to the lady. Nawab Jan was her agent. The written statement is marked Ext. AA. The suit was dismissed.

Cross-examination for plaintiffs Nos. 1 and 1(a).

Cross-examined by counsel for plaintiffs Nos. 1 *and* 1*a* :—I drafted the written statement. Nawab Jan approached me for the purpose of defending the suit. I do not remember who introduced Nawab Jan to me. The latter approached me 4 or 5 days before the filing of written statement. He came to me with a copy of the plaint and asked me to go through it and to go to Amir 40 Begum to receive instructions to draft her written statement. I went through the plaint on the same day. It was a big plaint. I was approached by Nawab Jan duing Court hours. I do not remember if I went through the plaint in Court or at my house after Court hours. I went to the lady Amir Begum next day after Court hours, in her house on Circular Garden Reach Road adjoining a restaurant. I do not remember the number of the house. I did not enter the house. Next says, I entered the house and went upstairs to the Verandah and not the inner compartment. Nawab Jan accompanied me there.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

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No. 77. Mr. Mofazzelur Rahaman, witness No. 25.

He did not produce before me any other papers than the copy of the plaint. I have not seen the documents referred to in the plaint. In the Verandah there was no body else except Nawab Jan. I had never been to that place before but I had been there afterwards. A voice behind the Purdah called out 'I have come here, I am Amir Begum'. I asked her first who she was. She replied that she was Amir Begum. I read out and explained the copy of the plaint to her. I reached there at about 4 or 4-30 P. M. and returned home at about 7 or 7-30 P. M. after sunset. I finished my work there before sunset. I did not translate to her every word of the plaint. I cannot say now without going through the plaint what I explained to the lady. I do not remember exact what the suit was about. But I remember that it was a suit for money on a pronote with a charge on property. There were other defendants in the suit but I do not remember their names. I think that the pronote created a charge by reason of the deposit of title deed. I do not remember who deposited the title deed and before whom. I cannot say if the plaint asked for sale of any property or only a money decree against Amir Begum. It may be that a money decree was claimed against defendants other than Amir Begum Seeing the plaint witness says after a pause for about 5 minutes that there is no prayer for any such relief against Amir Begum and it was a title suit and not a money suit. It was a suit for declaration of title to certain properties, *viz*, premises No. 36, Mominpur Road and No. 2 Dent Mission Road. I think that I explained to her that it was a suit for declaration of title to two properties aforesaid and not for any personal relief against her. She told me to file a written statement explaining the real facts of the case. She did not claim any interest in those two properties. Because she was a party she instructed me to file a written statement. I could not read her mind but I did what I was told. I did not myself realise whether she was concerned with the success or failure of the suit. Next says, I realised that the lady had no vital concern with the success of the suit, having regard to the fact that she claimed no interest in the two properties in suit. I do not remember whether I explained this to her. I was all along conducting the suit on her behalf. I cannot say even approximately how long the case lasted. The case was disposed of in one year. I conducted the suit up to the end. The suit was ultimately dismissed. I do not remember the ground of dismissal without going through the record. I think that I was present on the last date of hearing of the suit. I do not remember without seeing the record if the Court pronounced judgment. I did not read the judgment. No judgment was delivered in my presence. I do not remember if any witness was examined on behalf of my client. I cannot say without reference to the record if other defendants contested the suit. I cannot say if any witness was examined on behalf of the defendants in the suit. Seeing the record witness says that the suit was dismissed for default of both parties in their absence more than 2 years after its institution. I did not tell Amir Begum that it was waste of money to defend the suit on her behalf. She asked me to prepare her written statement after I explained the plaint to her. I took notes of her instructions. I have no record of the notes that I took. She gave her instructions of her own accord which I noted. I do not remember

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the number of pages of notes taken by me on more than two or three sheets of paper. I took notes on 2 or 3 pages. I do not remember if they were pencil notes. She herself dictated those notes. After finishing the notes I returned home on that day. I drafted the written statement immediately on my return I do not remember if Nawab Jan called again at my place on the third day. I met him on the day when the written statement was filed. I met him in the morning on that day. He gave me no instructions then. I had some conversations with him on that day relating to the suit. I do not remember them. I had seen him on 2nd December 1926 in Court during Court hours. He gave me no instructions then. After I prepared the written statement Nawab Jan got it typed. He came to me either on 1st or 2nd December and asked for my draft. I gave the draft to him on that day for getting it typed. He brought the typed written statement to me on the same day. It was not signed by the lady or sealed by her then. It was sealed in the morning of 3rd December 1926 in the house of Amir Begum. I went there myself. It was on the second occasion when I went there before 10 A-M. That house lies on my way to Court I went there so that after finishing my work there I might come direct to Court. I do not remember when I reached Court house. I remained there for about an hour. I found Nawab Jan in the house when I went there. I do not remember to have met any body else there except him and the lady. I went to the verandah. The lady did not announce herself in the same way as she did on the first occasion. On my enquiry if she had come she replied that she Amir Begum had come there behind the Purdah. I then explained the gist of her written statement to her. I did not explain her written statement word for word. Afterwards she put her seal mark on her written statement and Nawab Jan wrote her name on it. I saw the lady put out her hand out of the Purdah with the seal and put its mark on her written statement in my presence. I can say after perusal of the written statement what gist(?) was explained by me to her. So far as I remember, she approved of her written statement without any question. I do not remember the terms in which I explained her written statement to her. I cannot say without going through her written statement what was the important plea of her defence in the suit. Paragraph 10 of her written statement is a reply to paragraph 1 of the plaint. The reference in that para to the Wakf of Prince Kamar Kadar is in my opinion relevant to para 1 of the plaint. There is allegation to para 1 of the plaint about past possession of the property and its nature although there is no mention of Wakf. I do not remember with reference to which statement in para 2 of the plaint para 11 of written statement is written. I did not pay any income tax in 1926 when I filed the written statement. I do not remember the amount of fee I got in that case or if it was daily fee or a lump sum. I was not paid any extra fee for going to see the lady. I do not pay income tax now. I never paid any income tax.

Cross-examination for plaintiff No. 2.

Cross-examined by pleader for plaintiff No. 2 :—I did not find Moulvi Ibni Imam as a pleader of this Court when I joined the local bar in 1919. I do not remember in which year I found him here. I was conversant with the

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facts of the case 4 or 5 days through Nawab Jan before I filed Wakalatnama on behalf of Amir Begum. I did not go through the record of the case before I filed the Wakalatnama along with the written statement. I did not enquire who was acting for Amir Begum before I filed the written statement. Seeing the record witness says that Mr. Ibni Imam was conducting the case on behalf of Amir Begum before I filed the written statement and that Mr. Asik Ali was the Tadbirkar of Amir Begum for an affidavit filed in that case and that from the petition dated 26th November 1926 filed by Mr. Ibni Imam, on behalf of Amir Begum that her written statement was ready but has not been approved by the senior and that it would be ready for being filed if a week's time was granted. I do not find in the record that any issues were suggested by defendants although there are some issues suggested by plaintiff in that suit. The suit was disposed of on 15th March 1928 as appears from the record. From 1929 or 1930 I have been practising as a pleader in the Court of Calcutta Improvement Tribunal. I do not remember if I used to meet Nawab Jan so long as I practised as a pleader in Alipur Courts. I do not think that he brought me any other case. I forgot the name of my registered clerk at that time. He has retired from his business probably in 1929 as a clerk. I keep a diary.

Re-examination.

Re-examination :—The written statement referred to in the petition dated 26th November 1926 is not the same as filed by me.

N. Banerjee,
Offg. Sub-Judge.
14-5-35.

Mafazzelur Rahaman.

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No. 78.

Nos. 429-432.—Deposition of Syed Mahammad Ali, witness No. 26 for defendants Nos. 3 and 4, dated the 14th and 15th May 1935.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 78. Syed Mahammad Ali, witness No. 26.

T. Suits Nos. 1 and 2 of 1934.

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Deposition of witness No. 26 for the defendants 3 and 4 taken on solemn affirmation on the 14th day of May 1935, before Babu Nikunja Behari Banerjee, 3rd Addl. Sub-Judge, Alipur.

Examination.

My name is Syed Mahammad Ali, son of late Syed Alad Ali. My age is 72-73 years, I reside at Park Circus, District 24-Parganas, where I am a retired Head-translator of H. Court.

20 I was the Head Translator of High Court in the Appellate Side. I have retired in 1926. I know Bengali, Urdu, Persian, Arabic, Nagri, and English. The Wakfnama Ext. R executed by Kamar Kader was translated by me from its certified copy. When I was in service I translated the original Wakfnama which was printed in the paper-book. Then the paper-book was shown to me. This is the translation. It is marked Ext. R1. On comparison with the certified copy I found the translation to be correct. I have translated the Kabuliyat Ext. K. The translation is correct and I have certified it. It is marked Ext. K23. I revised the translation of the statement of Juhi Begum, Ext. M, and found it to be correct and certified it accordingly. 30 It is marked Ext. M1. I translated Ext. E20 and Ext. D3. These are the translations which are correct. They are marked Ext. E22 and Ext. D8 respectively.

N. Banerjee,
Offg. S. J.
14-5-35.

40 *Further examined:*—I have translated letter Ext. J. This is my translation. It is marked J11. I have translated the receipts Ext. D series and Ext. E series. These are my translations. They are marked Exts. D9 to D12 and Exts. E23 to E32.

Cross-examination for plaintiffs Nos. 1 and 1(a).

Cross-examined by Counsel for plaintiffs Nos. 1 and 1a:—The word *'mazhaban-asuaashri'* in clause 1 of the Wakfnama means by religion *'asuaashri'*

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The words following 11, Garbari Lane in clause 1 of the deed mean 'known as Jammutola Koti.' The object of the Wakf given in clause 1 of the deed is '*wastipar-warish warita aulad khud nasban bad nashir*'. I cannot translate it off-hand. The meaning of the word '*parwaris*' is support or maintenance. '*rifah*' means benefit. The meaning of the above expression is 'for the maintenance and benefit of my descendants, generations after generations.' The word '*ejra*' means 'in force' or '*jarikorna*' which may mean 'in force' or 'give effect to' '*umar khair*' means 'Charitable Acts'. The expression '*main ne masjid wa imambara karar diya hyay*' used in clause 2 of the deed means 'I have converted it into mosque and Imambara.' '*Karar diya*' may mean 'I have declared' if the context allows it. The words '*karar dina*' mean ordinarily 'declare or fix.' Here as one thing is turned into another thing I have translated it as 'converted' '*karar dina*' have got several meanings one of which is conversion. I know it by experience. I cannot name any dictionary in which the meaning of the plaintiffs 1 and 1a's Counsel is given. I cannot give any particulars of my experience on which I based this conclusion. '*Majalish Nauchandi*' mean meetings that are held on the new moon day. Shias know all these. I do not know. I am a translator. I have given my translations of the expressions used in the deed. I do not know but I think that '*Nauchandi*' means first day of Muharrum. I do not remember without reference to my translation how I have translated it. '*Towliat*' used in the opening of clause 3 of the deed means the office of Mutwalli or Trusteeship. The words '*towliat is wakfnama ki mere hat aur mere nam rahegi*' mean 'I shall remain Mutwalli of this Wakfnama'. This is the sense of it. The word '*matalak*' means concern. I have translated the deed literally and correctly. I cannot give any sense or significance to the words used in the deed. I do not know what is the meaning of the translation. It is for the Court to decide it. The words of the original deed are translated literally by me. The words '*unki nasl men yeh towliat jari rahegi*' mean 'Trusteeship or management will continue and remain with the descendants' I cannot explain the meaning of it. The definition of the word '*Khawajshia*' is given in the deed. '*Khandanishia*' is also explained in the document. I understand by that those who are governed by Shia School of Mahomedan law. Shia will have the same meaning also. I do not know what is the significance of putting the adjective Khandani before the word 'Shia.' It may be that Khandani Shia is a person who does not himself profess the Shia faith but comes of a family professing that faith. I can suggest no other meaning. I do not know any other meaning. The words '*barabar murattab na rakha*' used in clause 5 of the deed mean 'fails to keep it always prepared.' The words '*dar hisson me taqsim homhogi*' used in clause 6 of the deed mean 'shall be divided into ten shares.' The words '*agar meri aulad men kon na ho*' used in clause 7 of the deed mean 'if there is none among my descendants.'

Cross-examination for plaintiff No. 2.

Cross-examined by pleader for plaintiff No 2:—I knew Golam Tahoo who was translator in the High Court in the Original Side during my time.

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He is dead. I do not remember his handwriting. I have retired from Government service about 8 years ago.

N. Banerjee,
Offg. Sub-Judge.
15-5-35.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

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Sayyed Mahammad Ali.

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No. 79.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 433-436—Deposition of Syed Ali Waiz, witness No. 27 for defendants Nos. 3 and 4, dated the 14th and 15th May, 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 79. Syed Ali Waiz, witness No. 27.

Deposition of witness No. 27 for the defendants 3 and 4 taken on solemn affirmation on the 14th day of May, 1935, before Babu Nikunja Behari Banerjee, 3rd Addl. Sub-Judge, Alipore.

Examination.

My name is Syed Ali Waiz, son of Mir Sadak Ali. My age is 55 years. I reside at 3, Ismail Madan Lane, District 24-Parganas where I am a preacher.

I have completed the highest education in Arabic in Lucknow from Sultan-ul-Madaris. Thereafter I qualified myself for 4 years in Madrasat-ul-Waizeen. Thereafter I was sent to Gujrat, Kathiwar and Cutch. Afterwards I worked for 6 years in Africa. After that I was deputed to Calcutta where I have been over 6 years. I have my quarters at present at Hooghly Imambara. I was sent by Madrasat-ul-Waizeen for missionary and religious services to those places. This institution is under the supervision of the Mujtahids. I remained in the places I have mentioned as their deputies. I know that there is a Wakf of Prince Kamar Kader at Khidirpur. I came to know of it as my opinion was sought regarding the Wakfnama by the manager who is seated in this Court room and who is pointed by witness. I have read the whole of the Wakfnama. I expressed my opinion. I went there myself to read in the Imambara Majlish and also attended some Majlishes there. I cannot say the number of the premises. There is a mosque also in the same compound. It is in accordance with the rules of Sharyat.

Cross-examination for plaintiffs Nos. 1 and 1(a).

Cross-examined by counsel for plaintiffs Nos. 1 and 1a:—The rule of Mahomedan law for a mosque is that a place which is reserved and dedicated for prayers is a mosque and a Mihrab is made there. It is dedicated for the Moslem public. There is no restriction in a mosque for a Sunni or a Shia to say his prayers:—But it is quite a different thing that a Shia may refrain from going to a mosque where Sunnis generally frequent and *vice-versa*. It is not legal according to Sharyat to exclude either a Sunni or a Shia from any mosque. By Sharyat I mean Shara Muhammadi the rules laid down by

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

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No. 79. Syed Ali Waiz, witness No. 27.

our prophet. I offered my prayers only once in this mosque. I said my prayers singly and not in congregation. The room in which I said my prayers is 15 to 20 yards long and 4 or 5 yards broad. The Mehrab is made in one of its walls, which are 4 or 5 yards wide. It faces towards the east so that the people who say their prayers may face towards the west. The longer side walls run due east and west. The man who stands to say his prayers will have to stand in a slanting position, regard being had to the Mehrad. The side walls are not due east and west. None can say prayers in the direction of the walls. Mehrab is made at the junction of one of the shorter and one of the longer walls. Those who stand in rows for prayers would face it but those rows would not be parallel to shorter wall but would be slanting. The room used as mosque was formerly an ordinary one. It was not originally built for a mosque but it was subsequently converted into a mosque. There are residential rooms on the top of this room, In Calcutta there is a mosque like this called Basrabi mosque in Canning Street. There was also a room formerly like this which was converted into a mosque by making a Mehrab. I said my prayers there for 6 years I have seen the Wakfnama creating this Basrabi mosque. I do not remember the name of the creator of that Wakf. There is no tablet there to show that it is Wakf property. I do not remember of the date of that Basrabi Wakfnama. I saw a printed copy of it. Several printed copies of that Wakfnama were circulated. I saw the Basrabi mosque first about 6 years ago It was made long before I first saw it. None is at present appointed as its Mutwali, but the property is now in the hands of a Receiver.

N. Banerjee,

Offg. Sub-Judge,

14-5-35.

Cross-examination for plaintiff No. 2.

Cross-examined by pleader for plaintiff No. 2 :—There is no room above the Basrabi mosque. There are two minarets constructed on the mosque later on. On the entrance there are 4 small minarets. They were constructed about a year ago. When the house was built there were no such minarets or domes. I received summons from the manager day before yesterday. I received nothing else then. I do not know if people of Lucknow call me as Moulvi Petera. I reside at the Imambara at No. 3 Ismail Madan Lane. I am a religious preacher. I get Rs. 100 per month as my salary from Madrasa-ul-Waizeen. I have my house at Lucknow. I go there occasionally almost twice a year. I reside at the aforesaid premises No. 3 Ismail Madan Lane for the last six years. Mosque room, Imambara room, and water reservoir are separated from the Mosafirkhana but all these are in the same compound and there is a common court-yard in Basrabi mosque. That mosque is not a two storied house. In premises No. 128, Circular Garden Reach Road there is no water reservoir but there is a water

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jar. I have an appointment letter authorising me to preach. There is no mention of my salary.

N. Banerjee,
Offg. Sub-Judge.
15-5-35.

Read over, interpreted and admitted to be correct.

S. De.,
B. C.
18-5-35.

Syed Ali Waiz.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 79.
Syed Ali Waiz,
witness
No. 27.

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No. 80.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 437-441—*Deposition of Mr. Brojo Gopal Goswami, witness No.* 28 *for defendants Nos.* 3 *and* 4, *dated the* 15*th May*, 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 80. Mr. Brojo Gopal Goswami, witness No. 28.

Deposition of witness No. 28 for the defendants 3 and 4 taken on solemn affirmation on the 15th day of May 1935, before Babu Nikunja Behari Banerjee, 3rd Addl. Sub-Judge of Alipore.

Examination.

My name is Brojo Gopal Goswami, son of late Sridhar Goswami. My age is 63 years. I reside at 12 Ramkamal Street, Kidderpore, District 24-Parganas. My occupation is pleadership.

I am a Member of Alipore Bar since 2nd March 1898. I knew Prince Kamar Kader and his son Syed Ali. I knew also Rai Shaheb Sundarmull. I know the Wakf properties of Prince Kamar Kader. Syed Ali his son was the Mutwalli of the Wakf properties. He granted a lease to Sundarmull of those properties by a registered deed. I explained the deed to him and he executed it in my presence. I became an attesting witness to it. Identifies his signature. Syed Ali signed his name in my presence. Proves the deed of lease Ext. T2. The lease was granted with the permission of the District Judge. There was litigation to have the lease set aside. Ultimately the lease was set aside after some time. I believe that Syed Ali put himself in possession of the property. I saw Prince Kamar Kader. I know his English signature. I know Babu Abinash Chandra Pal, a Pleader of this Court and his signature. Seeing the affidavit sworn by Prince Kamar Kader witness says that it bears latter's and Abinash Babu's signatures who identified Kamar Kader in this affidavit. The words 'read over and explained' in the affidavit are in Abinash Babu's handwriting. The affidavit is marked Ext. CC and the signatures are marked Exts BB3 and BB4.

Cross-examination for plaintiffs Nos. 1 and 1(a).

Cross-examined by Counsel for plaintiffs Nos. 1 *and* 1*a*:—I was not present when the affidavit was sworn or when Abinash Babu wrote the endorsement in it or identified the Prince. I see the affidavit for the first time to-day. The lease of Sundarmull was executed by Syed Ali in my presence at his place. I did not see any actual delivery of possession taken by Sundarmull. The latter did not realise any rent from any tenant in my presence. I did not see Syed Ali actually taking over possession after cancellation of the lease. I had no occasion to see him realise rents from the tenants as it was no part of my duty. I saw lots of properties which were

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No. 80. Mr. Brojo Gopal Goswami, witness No. 28.

endowed by Kamar Kader as Wakf. I am an inhabitant of Khiderpore. I know all the properties of Prince Kamar Kader that were made Wakf. I was not present when the Wakf was made. I heard of Wakf first before the death of Kamar Kader, probably from the latter and also from the people of Khiderpore who used to talk about it. I do not recollect any particular occasion on which I heard of it. I personally knew some of the properties of Wakf as I was a pleader of the Prince in Sealdah Court. I know his premises No. 123 Circular Garden Reach Road, No. 11 Ranglal Street, Nos. 1 and 2 or No. 1 or 2 Dent Mission Road, Nos. 30 and 34 or some such number Circular Garden Reach Road where there is a hotel now, some Bustee land on Bhukailash Road. These are all I remember just now—I can not say when the Prince Kamar Kader last resided before his death but I can say where I saw him last.

Cross-examination for plaintiff No. 2.

Cross-examined by pleader for plaintiff No. 2:—I applied for insolvency. I am an adjudged insolvent. I have not yet got my discharge order. I had my house and a Towzi. I have placed them in the hands of the Official Receiver. My residential house is encumbered. I reside in that house now. I pay no rent to the Official Receiver for it. I keep diary of cases. I keep no notes of my meetings with my clients. I did not act for any of the parties to the lease except that I explained the document to the executant and became an attesting witness to it. I became a witness to the document at the instance of the lessee. I do not think that I was paid anything for becoming an attesting witness to it. It was an act of friendship as Sundarmull was my friend. I had absolutely nothing to do with the transaction as a lawyer. I cannot say exactly the year upto which I acted as a pleader for the Prince. It was 1915-16 or 1917-18. I began to act for him from 1903 or 1904. I used to receive my fees on bills. I defended some of the cases in Sealdah Court before S. C. C. Judge there on behalf of Prince Kamar Kader. I do not remember whether there were decrees against him or if Kazem obtained a decree against him. I knew the name of Saheba Khatun but I cannot say whether Prince Kamar Kader lived with her. While I used to work for the estate its officers came and talked about Shaheba Khatun within my hearing. I do not know if the Prince Kamar Kader was addicted to cocaine. I have no personal knowledge of it. From the officers of the estate or in connection with any suits I knew that premises No. 11 Rangalal Street, formed a part of the Prince's estate. I do not know who occupied that premises during the 4 or 5 years prior to Prince's death. I do not remember the name of the Bengali gentleman who was manager of the estate who was a witness to the lease in favour of Sundarmull. He was Prince's Manager for a considerable number of years. He met me several times in connection with the estate work upto the time when I gave up my work as a pleader. I do not know whether he continued his service under Syed Ali. I did not enquire of him about it I do not know who used to do works in Sealdah Court for the Prince after me. So far as I know, nobody else acted as the Prince's pleader in Sealdah Courts. It may be that some junior pleaders

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were engaged on Prince's behalf to assist me. I did not say that I know all the properties of Prince Kamar Kader. I know of some of his properties. So far as my recollection goes, there were about 30 items of properties covered by the lease in favour of Sundarmull. I do not remember that there were leases in favour of Shaheba Khatun in respect of the properties covered by the lease of Sundarmull. I do not remember who acted for Syed Ali as his lawyer at the time of the lease in favour of Sundarmull. I did not enquire about it. Upto this time I do not know it.

N. Banerjee,
Offg. Sub-Judge.
15-5-35.

Brojo Gopal Goswami.
15-5-35.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 60.
Mr. Brojo Gopal Goswami, witness No. 28.

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No. 81.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 442-446—*Deposition of Kaivan Jah, witness No.* 29 *for defendan's Nos.* 3 *and* 4, *dated the* 15*th May,* 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 81. Kaivan Jah, witness No. 29.

Deposition of witness No. 29 for the defendanats 3 and 4 taken on solemn affirmation on the 15th day of May, 1935, before Babu Nikunja Behari Banerjee, 3rd Addl., Sub-Judge of Alipore.

Examination.

My name is Kaivan Jah, son of Prince Doraza Bahadur. My age is 40 years. I reside at 4/1, Collin Lane, District 24-Parganas where I am a political pensioner.

My father was a son of the Ex-King of Oudh. He was also an Honorary Presidency Magistrate. I know his handwriting and signature. Seeing the affidavit Ext. CC witness says that it bears his father's signature. I do not remember if the affidavit was sworn before me. The signature is marked Ext. BB5. I was married to Nawab Khurshed Ara Begum daughter of Prince Kambuksha Bahadur. My mother-in-law was Nawab Rosin Ara Begum. Nawab Hasim Ali Khan as guardian gave Khorshed Ara Begum in marriage to me. He is now sitting in this Court room. He was present in my marriage. Sum of Rs. 50,000 was fixed as dower of my wife at the time of my marriage. Hashem Ali Khan was present then. I knew Nawab Juhi Begum. She was my cousin and also my maternal uncle's wife. She was the wife of Nawab Hashem Ali Khan who was my wife's maternal uncle. My mother-in-law was the step sister of Hashem Ali Khan. I often used to meet Nawab Juhi Begum in 1923 at premises No. 28, Circular Garden Reach Road and at Lucknow. In Lucknow she and Hashem Ali Khan were not on good terms. Because of money matters their feelings were strained. This resulted in the death of Juhi Begum. She had come to Calcutta with Laddon Aga after ill-feelling between her and her husband in 1923. Her husband did not accompany them then. Approximately in 1926 he came to Calcutta. In 1926 when I went to Prince Sultan Mirza's place I met Hashem Ali Khan. He told me that he had been turned out by his wife as there was some quarrel and he wanted me to fetch his cloths from premises No. 28, Circular Garden Reach Road. But I declined to do so. I knew Prince Kamar Kader. I know that he created a Wakf. I attended Majlis in the Wakf Imambara. During the lifetime of Kamar Kader I attended the Majlis only once. After his death I attended Majlises several times in the lifetime of my cousin Syed Ali.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 81. Kaivan Jah, witness No. 29.

Cross-examination for plaintiffs Nos. 1 and 1(a).

Cross-examined by Counsel for plaintiffs Nos. 1 *and* 1*a*:—I was 36 years old when my father died. It was in 1927 or 1928 when I last visited Lucknow. Previous to that I had been there in 1923. Next says, I had been several times there during the period from 1923 to 1927 or 1928. I had gone to Lucknow in connection with litigation. My wife and her three brothers were the plaintiffs in that case. Nawab Kharunnesa was the only defendant in that case. I do not remember in which month the case went on. I do not know if the suit was instituted before 1923 or in that year. The suit was decided in 1924 or 1925. I do not remember the month in which the suit was decided. I have seen the copy of the judgment in that case. I do not remember the name of the Court which decided the case. I do not know it because I did not make any Tadbir in that case. I went to Lucknow in 1923 at the end of September or in the beginning of October. I did not leave Calcutta during the year 1923 before I went to Lucknow. I remained in Lucknow for 6 months on that occasion. I did not nothing in connection with that case. I had gone there for that case. I did nothing in that case because the case was proceeding on behalf of my wife and before my leaving for Calcutta. My father directed me to appoint Nawab Bannay Saheb to look after the case. I went there because my wife went there and whatever was necessary to be communicated to her was done by me. I had also to pay the expenses of the case. I cannot say what was the amount spent in that case, during the six months of my stay there. I do not know who were the pleaders engaged by plaintiffs in that case but I appointed pleader on behalf of my wife in that case. Next says, I did not appoint any pleader for her. I cannot say how much fees were paid to her pleader in that case. She has no house of her own at Lucknow. She put up in the house of Nawab Bannay Saheb. I returned to Calcutta in the beginning of March, 1924 with my wife. I did not accompany Juhi Begum when she accompanied Laddon Aga to Calcutta. I cannot say the date or month of their coming to Calcutta. I met Juhi Begum in 1923 so long she remained in Calcutta. I did not meet her every day. I have kept nothing in writing to show the months and dates of my visits to her. When I joined the first Majlis after the death of Kamer Kader I was told that he had made a Wakf. I know English. That first Majlis was held 3 or 4 years after his death. Since then I have been there 6 or 7 times. Nothing happened in my presence about money matters between Juhi Begum and her husband regarding which ill-feelings arose between them.

Cross-examination.

Cross-examined by pleader for plaintiff No. 2:—I know Laddon Aga and his brother Munne Aga. I can read Urdu. Seeing the postal receipt Ext. 21 witness says that he cannot read it. I did not attend Court in connection with this case before to day. But I attended Court before in connection with my brother's case. I was not in this Court room when Subdar Jah gave his evidence. I was here when Nawab Hashem Ali Khan was examined. I do not know Haji Kasem Saleji. So I cannot say whether I was present in this Court room when he was examined. I have come here

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to-day at the request of the Manager. I am not summoned. He told me that I would receive my summons in Court. He had been to my place yester morning at about 8-30 A.M. His name is Jafar Shirazi. I do not know to which place he went from my place yesterday. I attended Majlises at several places on several occasions. I do not remember those places or occasions.

N. Banerjee,
Offg. Sub-Judge.
15-5-35.

Kaivan Jah.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 61.
Kaivan Jah, witness No. 28.

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No. 82.

No. 447—Deposition of Mr. Sasi Sekhar Banerjee, witness No. 30 for defendants Nos. 3 and 4, dated the 16th May, 1935.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 82. Mr. Sasi Sekhar Banerjee, witness No. 30.

T. Suits Nos. 1 and 2 of 1934.

Deposition of witness No. 30 for the defendants 3 and 4, taken on solemn affirmation on the 16th day of May, 1935, before Babu Nikunja Behari Banerjee, 3rd Addl. Sub-Judge of Alipore.

Examination.

My name is Sasi Sekhar Banerjee, son of late Kedar Nath Banerjee. My age is 68 years. I reside at No. 21, Jeliatola Street, District 24-Parganas where I am a Solicitor of Calcutta High Court.

I am a Solicitor of the High Court since September, 1895. I knew Mr. Byomkesh Chakrabartty. He is dead. He was an eminent counsel of Calcutta High Court. I know his handwriting and signature. The writings in the margin of a translation of a darft of deed of Wakf are in his hand and bear his signature. They are marked Ext. DD.

The objection of the counsel for plaintiffs Nos. 1 and 1a being overruled on the ground that they are admissible as evidence of the fact that Prince Kamar Kader consulted Mr. Byomkesh Chakrabartty counsel in regard to the Wakfnama which he intended to execute.—N. Banerjee.

No cross-examination.

N. Banerjee,
Offg. Sub-Judge.
16-5-35.

Sasi Sekhar Banerjee.
16-5-35.

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No. 83.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 448-452—*Deposition of Mahammed Abbas, witness No.* 31 *for defendants Nos.* 3 *and* 4, *dated the* 16*th May*, 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 83. Mahammad Abbas, witness No. 31.

Deposition of witness No. 31 for the defendants 3 and 4 taken on solemn affirmation on the (16th) day of May, 1935, before Babu Nikunja Behari Banerjee, 3rd Additional Sub-Judge of Alipore.

Examination.

My name is Mahammad Abbas, son of Mahammad Bakhar, My age is 85 years. I reside at Matiaburuz, District 24-Parganas. My occupation is service.

I am 85 years old. I know Prince Kamar Kadar Bahadur. I saw his childhood, youth, old age and death. He was younger than me by 3 or 4 years. He was married to the daughter of a gentleman of Lucknow known as Agha during the lifetime of the Ex.-King of Oudh. The name of the daughter was Amir Begum. The marriage took place at Sultankhana at Matiaburz in my presence. Sum of Rs. 50,000 was fixed as the dower settled at that marriage. King Wazed Ali Shah fixed the dower. I was then a servant of the King at the time of marriage. My duty was to supervise the Sepoys stationed at the doors of the houses where the King's Begums lived. The King had two Nikai wives. His other wives were mutai. His first married wife was Nawab Kkas Mahal. His second Nikai wife was Nawab Akhter Mahal. From his first wife he had a son who was the heir apparent and was named Hamid Ali Mirza. From Aktar Mahal he had a son named Mirza Khosh Bukht. His other sons were by his Mutai wives. Nawab Fakhr Mahal mother of Kamar Kadar was also a Mutai wife of the Ex-King. Hamid Ali Mirza died at Metiaburuz. Prince Kamar Kadar Bahadur had no special position among the sons of the King by his Mutai wives. They were all equal in rank and dignity but were in inferior position to that of the sons of the King by his Nikai wives. Among the sons of the Mutai wives of the King General Saheb Prijis Kadar and also some others were older in age to Prince Kamar Kadar. General Sahib's position was greater than that of other sons of his Mutai wives. The heir apparent Hamid Ali Mirza, Mirza Khos Bukht and General Sahib died during the lifetime of the King. Brijis(?) Kadar also predeceased the King; next says he died after the King's death. He fled to Nepal. I was also under the employ of Prince Kamar Kadar. I did not attend the marriage of any other son of the Ex-King.

Cross-examination.

Cross-examined by Counsel for plaintiffs 1 *and* 1*a* :—I am at present in service of all the sons of Prince Baber. The latter has left 4 sons. I do not

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1931.

Evidence for defendants Nos. 3 & 4.

No. 83. Mahammad Abbas, witness No. 31.

know the full name of any of them. One of them is called Kaiser and another is named Yusuf who is son-in-law of Syed Ali son of Prince Kamar Kadar. His wife is Paya Begum a daughter of Syed Ali, My salary is Rs. 25 per month. I am only a Mosaheb. I have no particular work to do as I am too old for any work. I have never attended any marriage during the life-time of the Ex-King except that of Prince Kamar Kadar. I did not join any marriage after the death of the Ex-King. Sultankhana was the principal palace of the Ex-King at Matiaburuz. I can only name one or two Begums of the Ex-King, the Sepoys at whose houses I supervised. Their names are Khaqan Mahal and Mashuq Mahal. The house of Khaqan was about 2 furlongs from Sultankhana. The house of Mashuq Mahal was about ½ mile off from Sultankhana. I do not remember how many sepoys were posted at her house or at the house of Khaqan Mahal or their names. I continued in the said service of the Ex-King up to the time of his death. I do not remember the year in which the Ex-King died. Prince Kamar Kadar was married with Amir Begum about 15 or 16 years before the death of the Ex-King. I do not remember the year or date of that marriage either English or Arabic. I do not remember the name of any of the two Moulvis who read the Nika of Prince Kamar Kader. Next says one of them was Meyer-ul-ullema. This was his title but his name was Mirza Mahammad Ali. He is dead. He was the Vakil of Amir Begum. The Ex-King himself was present at the Nika-Majlis. None was present there who is alive now except myself. The Ex-King must have signed the Kabin-nama of the marriage. I did not see him sign it. I did not sign it. I did not see anybody sign it. I was at a considerable distance from the place of execution of the Kabinnama where there was a large crowd. The Nika is read by the Moulavis in the Arabic language. I did hear what they recited at the Nika marriage of Kamar Kadar. I do not know Arabic and so I cannot reproduce what they said. I could not understand what they read was Arabic. I came to know of the amount of dower because each of the two Moulavis repeated the figure Rs. 50000 in Arabic which I could understand. I do not know the Arabic of fifty thousand. The Moulvis used the Urdu words 'Panchas Hajar'. Except those words they did not use any other Urdu expression. I have no writing in which the amount of that dower is mentioned. There is no special reason for me to remember the amount of the dower except when it is mentioned. I can recall it to my memory. Before to-day nobody ever asked me about the amount of dower of Prince Kamar Kadar. Paya Begum and Hinga Begum who are in authority now-a-days sent their peon to me with summons at my house yesterday in the morning. That peon told me that I would have to give evidence to-day. One person delivered the summons to me. I did not read the summons or get it read over to me. As I was told to come to Court to-day I have come. I have got no diet money. I did not ask any body on what points my evidence would be required. Nobody told me on what points I would be examined. I do not know what is the English date to day. I don't know even the current English month. I can not explain how in the summons 13th May is written as the date of my attendance in this Court. I was 25 years old when Kamar Kadar was married. I have come to Calcutta with the Ex-King

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from Lucknow. I do not remember how many years after we came to Lucknow Kamar Kadar was married. The Ex-King came to Calcutta before the last mutiny. I was then 11 or 12 years old. I was in the service of the Ex-king even at Lucknow and employed in the same work. My ancestors were also in his service. I know Nawab Maziduddowla. He was the person who was known as Agha. I do not know if he was the grandson of King Mahammad Ali Shah of Oudh or if he was the nephew (sister's son) of Nawab Mumtazuddowla. He belonged to the Royal family of Oudh but I do not know if he received any political pension and Wasika.

N. Banerjee,
Offg. Sub-Judge,
16-5-35.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 83. Mahammad Abbas, witness No. 31.

Read over, explained and admitted to be correct.

S. De,
B. C.
16-5-35.

Mahammad Abbas.

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No. 84.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 453-454—*Deposition of Hira Lal Mondal, witness No.* 32 *for defendants Nos.* 3 *and* 4, *dated the* 16*th May*, 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 84. Hira Lal Mondal, witness No. 32.

Deposition of witness No. 32, for the defendants 3 and 4, taken on solemn affirmation on the 16th day of May, 1935, before Babu Nikunja Behari Banerjee, 3rd Addl. Sub-Judge at Alipore.

Examination.

My name is Hiralal Mondal, son of late Akhil Ch. Mondal. My age is 28 years. I reside at 58 Hindusthan Park Ballygunj, District 24-Parganas, where I am a pleader's clerk.

I am now clerk of Babu Bimal Chandra Ganguli, pleader. Before that I was clerk of Babu Abinash Chandra Sarkar. I know pleader Babu Debendra Nath Sen. He sits in the Sherista of Abinash Babu. I have not seen him come there to-day. I know his handwriting. Seeing the written statement filed in T. S. No. 158/20 witness says that it bears Debendra Nath Sen's signatures. The signatures are marked Ext. C5. Seeing the endorsement on the back of Wakalatnama witness says that it is in Debendra Babu's handwriting and that it bears his signature. The endorsement is marked Ext. C6.

Cross-examination for plaintiff No. 2.

Cross-examined by pleader for plaintiff No. 2:—My age is 18 years. I frequent the Court compound for 7 or 8 years. I was registered as a clerk of Bimal Babu pleader in 1931. Before that I learnt the work in Abinash Babu's Sherista. There I used to make copies and Tadbirs in cases. I did the work of Debendra Babu but when I do not remember. I entered his Sherista in 1927. Basanta Kumar Chakrabartty does his work now. He also did his work then. I cannot say if he has come to Court to-day. I know Babu Satish Chandra Ghosh pleader and his son-in-law Jogesh Babu pleader and their handwritings. The written statement filed by Juhi Begum in T. S. No. 158/20 bears at every page Jogesh Babu's signatures. The signatures are marked Ext. 26. Seeing the endorsement on the back of the Wakalatnama filed in that case witness says that it is in Jogesh Babu's handwriting and bears his signature. The endorsement is marked Ext. 26A.

Cross-examination for plaintiffs Nos. 1 and 1(a).

Cross-examined by Counsel for plaintiffs Nos. 1 *and* 1*a*:—Seeing summons Ext. 7 and a copy of the plaint witness says that the copy of the plaint

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendants Nos. 3 & 4.

No. 84. Hira Lal Mondal, witness No. 32.

bears the signature of Bimal Babu who is conducting this case no behalf of defendants Nos. 3 and 4. The signature is marked Ext. VIII. I cannot say if it was written in his Sherista.

N. Banerjee,
Offg. Sub-Judge,
16-5-35.

Hira Lal Mondal.

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No. 85.

Nos. 455-462—Deposition of Kazim Hossain Beg, witness No. 33 for defendant No. 1, dated the 17th May, 1935.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for defendant No. 1.

No. 85. Kazim Hossain Beg, witness No. 33.

Deposition of witness No. 33 for the defendant No. 1, taken on solemn affirmation on the 17th day of May, 1935, before Babu Nikunja Behary Banerjee, 3rd Addl. Sub-Judge of Alipore.

Examination.

My name is Kazim Hossain Beg, son of Mirza Mujaber Hossain Beg. My age is 65 years. I reside at 123, Circular Garden Reach Road, District 24-Parganas. My occupation is service.

I knew Mirza Syedali I was in his service; now I am in the service of his son. I was appointed by Syedali in June, 1933 as his son's guardian tutor. He was suffering from Paralysis. One of his hands and one of his legs were affected when I was appointed. Doctor Bidhan Ray used to treat him. His treatment continued for 3 or 4 months after my appointment. There was no improvement by his treatment. Then he was placed under the treatment of a Hakim Syed Ahmed Allamo Hindi for 4 or 5 months, under his treatment he had this improvement that he could come downstairs with the help of a person and sit there to attend to his business sometimes for ½ or 1 or 1½ hours. This Hakim left for Lucknow for his business. Then he was placed under the treatment of Dr. Banerji a Homœopath for 1 month or more. There is no improvement under his treatment. Then Dr. Naliniranjan Sen Gupta treated him in the latter part of March, 1934. He died on 11th June, 1934. From June, 1933 till his death he could understand things and gave answers to questions put to him but he was not talkative by nature. I reside in premises No. 123, Circular Garden Reach Road which appertains to Wakf property created by Prince Kamar Kader. Majlises are held there in Muharrum. I have attended such Majlises and said prayers both singly and congregational in the Mosque. The translation of the deed of assignment by Ganesh Babu attorney is written in Bengali fashion. It is a corrupt form of Urdu spoken in Bengal. It is difficult to understand it. Reading the translation witness says that no Urdu word is correct and that no meaning can be made out of the word 'পুরা মালিক হোতা হ্যায় (become absolute owner).

Cross-examination for plaintiff No. 2.

Cross-examined by pleader for plaintiff No. 2:—In answering the question আপ কেয়া কর্ত্তাহ্যায় (what are you doing) witness says 'হাম নকরি কর্ত্তাহ *i. e.* I am in service. My salary is Rs. 20 per month besides board and lodging and seasonal robes. Begum Saheba, widow of Syedali, has got no property

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendant No. 1.

No. 85. Kazim Hossain Beg, witness No. 33.

of her own. As a guardian of her minor son she has a right in the Wakf Estate. She is in possession of some parts of the estate. She has been able to realise rents from one or two tenants. Syed Ismile looks after this case on behalf of his minor son. All papers are signed by Syedali's widow. The office is at premises No. 11, Rangalal Street where Jafar Shirazi Manager of Syedali's daughters lives. Most of the papers have been taken there except some old papers which are still at premises No. 123, Circular Garden Reach Road. I understand that some *mamuli* old papers are left at the latter place. Kristo Babu is a pleader for Syedali's widow. The statement made by the latter in para 'G' of her petition dated 27th September, 1934 filed in T. S. No. 112 of 1932 / 8 of 1931 is correct. Jafar Shirazi the Manager went home after I joined my service. He stayed at his house for more than 2 months and less than 3 months then when he went home in the latter end of 1933. A woman who is not married in *Nika* or *Muta* form is called a *Mudkhula* or kept woman or a concubine. A petition has been filed in the name of the daughters of Syedali to the effect that Hamidi Begum was a *Mudkhula* or kept woman of Syedali. Sons born of a *Mudkhula* woman are illegitimate. Syed Ahmad Allama Hindi was the Imam of the Mosque when I said my prayers there. He is not there now as he has left the place as the result of a political enquiry into the affairs of Begum Saheba. I do not remember the date. That enquiry by Political Department was made on the complaint of some members of Oudh family and Moulvi Ibne Imam pleader now present in Court. The Deputy Commissioner of Police examined the widow in regard to the complaint whether she had given Rs. 10,000 in notes and two rings each worth Rs. 10,000 to Syed Ahmad Allama Hindi. I have said that the petition was made in the names of daughters of Syedali because ladies of a respectable family will not charge their deceased father with adultery. It is true that Moulvi Ibne Imam lived with the Manager Mirza Jafar Shirazi at the same house when the petition was made. I knew Prince Hussain Askari. I had no talk with him regarding this suit. He did no Tadbir in my presence in this suit.

Cross-examination for plaintiffs Nos. 1 and 1(a).

Cross-examined by counsel for plaintiffs Nos. 1 *and* 1*a* :—Reading page 71 of the deposition of Ganesh Chandra De, P. W. 3 witness says that he can not understand any proper meaning out of it but some words have some meaning but the translation read as a whole makes no sense at all. There is a room in premises No. 123, Circular Garden Reach Road in which prayers are said. Everybody has a right to repeat his prayers where he lives in his house but one special portion of premises No. 123, Circular Garden Reach Road has been converted into a Mosque for the purpose. It was not converted in my presence. I was not then in Calcutta. Generally Shias say their prayers at their house. It is not necessary to set apart a portion of the house for the purpose of prayers. I have not seen this in any house to which I had a chance to go. It is not the usual rule in Calcutta that the rows of persons saying prayers in a Mosque should stand along the length of the

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Mosque as here the rooms are generally small. Generally congregation in a Mosque stand its lengthwise. There is one Mosque at Khidderpore where this general rule is not followed for want of sufficient space, although it is built as a Mosque. If a man who intends to build a Mosque gets the ground which is necessary for it the Mosque is built in the general way so that the rows of men who repeat their prayers may be one behind the other lengthwise but when the ground is not sufficient they cannot stand in this way but they stand in a curved direction according to the main building. Even if the space is small but the directions of the walls are such that the side walls point to the Kaaba and are the smaller walls then the rows are lengthwise. But if the longer walls point to the Kaaba the rows will stand broadwise from north to south. The rows are always from north to south. In the premises No. 123, Circular Garden Reach Road the room coverted into mosque none of its walls point towards the Kaaba. The result is that the rows stand in slanting direction. A man repeating his prayers will always face the Kaaba. A man entering the room converted into mosque in premises No. 123 Circular Garden Reach Road will have to turn his face towards the right slanting towards the south and will face the left hand corner of the building to say his prayers. The Meharab is not in the left hand corner. It will be on the right hand side of the man entering the room. Every Shia holds Majlises at his house during Muharrum whether there is Imambara or Wakf or not. Nawchandi is the first Thursday of every lunar month. No Shia will understand by it the first day of lunar month unless that day happens to be Thursday. I know very little of Persian er Arabic. Syedali had a married wife at the time of his death, *viz.* his present widow named Iffat Ara Hamidi Begum. He had a legitimate son hy her named Mirza Wahedali of whom I am the tutor. I know Dildar Hosain. He sells jewel rings. He was examined during the enquiry of assistant or deputy commissioner of police aforesaid. He told me this. He filed an affidavit contrary to his former statement. He told me this also.

Cross-examination for defendants Nos. 3 & 4.

Cross-examined by pleader for defendants Nos. 3 *and* 4:—I was not present in all proceedings of the aforesaid enquiry but I was present in the building but not at the place where the lady was examined. Dilwar Hosain was not examined before me. I have not heard of his death as yet. I met him last 10 or 12 days ago after the last Muharram. Ibne Imam does not live at premises No. 11 Rangalal Street since he has brought his family. It was about 2 or 3 months ago. He left that place for his native village in December last during the X'mas holidays. He never returned there. I am not looking after the work of Iffat Ara Begum in law Courts. Ismile does it. When he falls ill I sometimes come to look after her work. The petition referred to by pleader of plaintiff No. 2 was not filed in my presence. During the lifetime of Syedali the Wakf office was on the ground floor just below the Imambara. The office is no longer there. It is now in premises No. 11 Rangolal Street. Two almirahs of that room in premises No. 123 Circular Garden Reach Road belong to the daughters. Two other almirahs are almost empty as very few papers are in them. I think that there was never any list of papers kept in that office nor any list was prepared at the time of removal

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for defendant No. 1.

No. 86. Kazim Hossain Beg, witness No. 33.

to premises No. 11 Rangolal Street. I do not know what papers have been filed in this suit or other suits relating to the Wakf estate. Syedali was suffering from Paralysis from before I joined his service. He died of Pneumonia and not of Paralysis, after suffering for three days. He was not cured fully of Paralysis. I do not know if he was examined on commission. I know that two medical certificates were granted to him by Dr. Bidhan Chandra Roy in my presence. I saw him write them. Witness identifies the certificates Exts. Y and Y1. During his treatment Syedali had electric treatment under his advice, for 1 or 1½ or 2 months. I cannot say if he improved or became worse under that treatment. Electric treatment was stopped during the course of Bidhan Ray's treatment. Questions regarding Syedali's health in January 1934 are disallowed as no permission to cross-examine the witness on such questions was sought by the pleader for defendants 3 and 4.

N. Banerjee,
Offg. Sub-Judge.
17-5-35.

Kazim Hoosain Beg,
witness.

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No. 86.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 463-465—*Deposition of Rajat Chandra Sen, witness No.* 12 *for plaintiff No.* 2, *dated the* 17*th May*, 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for plaintiff No 2.

No. 86. Rajat Chandra Sen, witness No. 12.

Deposition of witness No. 12 for the plaintiff No. 2 taken on solemn affirmation on the 17th day of May, 1935, before Babu Nikunja Behari Banerji, 3rd Addl. Sub-Judge, Alipore.

Examination.

My name is Rajat Chandra Sen, son of late Dr. Mohendra Nath Sen. My age is 42 years. I reside at P72, Theatre Road, District 24-Parganas. My occupation is Medical Practitioner.

I am a graduate of Calcutta Medical College. I received my Diploma of M. B. in 1917. Mr. N. C. Sen, Judge of Calcutta S. C. Court was my brother. I knew Lt. Colonel B. H. Deare. When I was a student in 1912 he was a professor of Materia Medica. In 1919 he became the principal. I was attached to the Medical College from 1917 to July, 1922 first as senior house physician to Colonel Calvert and then from 1918 as a demonstrator in anatomy. I met Colonel Deare in my professional capacity. I saw him write and sign many times. I think I remember his handwriting and signature. Seeing the medical certificate dated 30th November, 1915, witness says that it is in Dr. Deare's handwriting and bears his signature. The certificate is marked Ext. 27. Dr. Deare is not in Calcutta. He has retired from Government service. He was Surgeon-General to the Government of Bengal when he retired. He has left India. I do not know his present whereabouts. Seeing another medical certificate dated 20th May, 1915, witness says that it is in Dr. Deare's handwriting and bears his signature. The certificate is marked Ext. 27A. I have not treated any habitual cocaine eater as my patient. Drug habit means a person who takes the drug with gradually increasing doses without any apparent harmful effect. I am not an expert in medical jurisprudence. I cannot say whether cocaine has a benumbing or stupefying effect on the mental capacity of a person addicted to it. Seeing another certificate dated 25th June, 1913, witness says that it is in Dr. Deare's and bears his signature also. It is marked Ext. 27B. Seeing another medical certificate dated 26th July, 1915, witness says that it is written and signed also by Dr. Deare. It is marked Ext. 27C.

Cross-examination.

Cross-examined by pleader for defendants Nos. 3 *and* 4 :—I was a student of the fifth year class of Calcutta Medical College in 1915. I joined that

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiff No. 2.

No. 86. Rajat Chandra Sen, witness No. 12.

College in 1911 after passing the Matriculation examination in that year. I have no personal knowledge of the aforesaid certificates. I do not know when and under what circumstances they were given. I came to know first of Colonel Deare's handwriting in 1912 when I was a student of 2nd year class. I saw him write last prescriptions in 1921. I do not hold letters from him as well as certificates. All these certificates are attached to certain documents the contents of which I am unable to say. I cannot say if such documents are petitions filed in the High Court or not.

N. Banerji,
Offg. Sub-Judge.
17-5-35.

Rajat Chandra Sen.
17-5-35.

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No. 87.

Nos. 466-474.—*Deposition of Abdul Quaem, witness No.* 13 *for plaintiff No.* 2, *dated the* 17*th and* 18*th May,* 1935.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiff No 2.

No. 87. Abdul Quaem, witness No. 13.

T. Suits Nos. 1 and 2 of 1934.

Deposition of witness No. 13 for the plaintiff No. 2 taken on solemn affirmation on the 17th day of May, 1935, before Babu Nikunja Behari Banerjee, 3rd Addl. Sub-Judge of Alipur.

Examination.

My name is Abdul Quaem, son of Amzadali. My age is 35/36 years. I reside at Matiaburuz, District 24-Parganas. My occupation is trading.

I knew Husain Askari. He often used to go to our shop. My father had a druggist's shop. He used to sell Hakimi medicines. Husain Askari got a Wakfnama written by him. He dictated its contents. A draft was prepared of the deed. It was given to my father for having it engrossed on a stamp paper and he copied it on that paper. Husain Askari then took it away. The next day he again came and brought one sheet of paper and said that some portion was omitted and requested my father to have it written on it. Then he got it written on that paper and went away with it. He again came for the third time with that one sheet of paper written on the 2nd day and asked my father to put his signature on it as a scribe. My father told him that he would not sign it as it did not bear the signature of Kamar Kader. There were some signatures on that paper. Husain Askari said "As other persons have signed it, why will he not sign it also? Saheba Khatun has asked him to take his signature". Then Husain Askari further said, that Saheba Khatun had told him that she would get the signature of the Prince and that of that Amjadali should rest assured and that the latter should put his signatue on it as a scribe. My father saw other signatures on the paper and then put his own signature on it. As there was no space for his signature on the last page of the deed my father signed it in a slanting way. Kamar Kader's signature was not there on the right hand side of my father's signature then as that page shows it now.

N. B.,
S. J.
17-5-35.

Further examined:—The words 'Katibul Harroof Amjadali Sakim Matiaburuz' on the Wakfnama are written by my father. Those words mean

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiff No. 2.

No. 87. Abdul Quaem, witness No. 13.

Cross-examination.

'writer of the letters' *i. e.* the scribe. My father used to live near the iron gate, Matiaburuz when he wrote those words. I do not remember the date. I remember the year. It was in 1917, either towards the end of May or in the beginning of June.

Cross-examined by pleader for defendants Nos. 3 and 4:—I do not remember the year of my birth—when I was born at Sultanibazar also called Bangalibazar where my parents were living It was a straw-thatched hut. The land belongs to that person to whom the Bangalibazar belongs. My father built that hut. Mir Khadun Hossain was collector of rent for that hut. I do not know who the landlord was I do not know what was the rent payable by my father. My father left that hut when I was very young. The hut also broke down. Then we shifted to a rented hut. I cannot say what was my age then That hut was adjacent to the previous hut. It belonged to the same landlord. I do not know its rent. My father used to pay it. Then we removed to a third hut in the Mohalla known as iron gate. I then attained the years of discretion but I cannot say my age then. The hut belonged to Abadi Begum. I do not know its rent. My father used to pay it. We lived in that hut from 1916 for more than 3 or 4 years. I was then about 16 or 17 or 18 years old I used to sit in my father's shop then and to sell medicines during his absence. I am literate. I commenced study in my childhood. I read in my home. I cannot say how long. I read 2 or 3 Urdu books, *i. e.* 1st, 2nd and 3rd books of Urdu. I do not remember their author or authors. My father died on 11th September 1929. He wound his shop before his death as the Karbar was not going on. He closed his shop many years before his death. It would be 4 or 5 or 6 years before his death. He married for the 2nd time in Kidderpur. I do not remember the year. I do not remember my age then. I cannot say it even by guess. We were then residing at Bangalibazar. My father did not live at Kidderpur after his 2nd marriage there. I have got a shop containing oil, essence, Jarda, betels, Biris, etc., for sale. I also prepare Biris. The license for the shop stands in the name of my brother Abdul Salam. It is not true that I prepare Biris in his shop. The shop belongs to me. I have got the license in his name at his request. I am involved in debts. I am indebted to Abdul Khair to the extent of Rs. 30 or 35. At times I borrow money from him and I pay it up to him. I do not recollect if I am indebted to Haridas. I am not indebted to Hindu. Two months' rents are in arrears at Rs. 2 per month for the hut in which I live. The rent for the shop is Rs. 9 per month. I am not in arrears regarding the shop. I can produce the receipts granted by its landlord. I was never fined by Cr. Court. I do not know Rasulal. There was no cr. case between me and Hindu. I was not summoned. On Wednesday last Nanabati called me to come. He did not pay me any expenses. I have come to Court yesterday and to-day at my own expenses. I have known Nanabati for the last 11 or 12 years. I do not know his address. I came to know him at Murgihata when I went to purchase books. I do not remember at whose shop I met him or who introduced him to me. I have no

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dealings with him. I have never borrowed from him. I am not related to him. Since I first met him I often met him sometimes at Murgihatta and sometimes at Metiaburuz. He is now present in Court. I do not know if he is Hashem Shaleji's man. It is only on account of acquaintance and friendship that he comes to my house. I do not know what he does. I asked him what the business was about when he requested me to attend Court. He told me that he had heard that my father had written the Wakfnama of Kamar Kader. On my answer in the affirmative he requested me to depose in Court as to what I knew about it. I gave him in short what I knew about the Wakfnama. None else was present then. I never gave out to anybody before that talk what I knew about the Wakfnama. Seeing the last page of the Wakfnama witness says that there is space above the signature of my father on it sufficient to cover it. I knew Husain Askari from my childhood. I cannot say my age then. I do not remember at what place I first saw him. I have seen him many times before he came to the Wakfnama. I cannot say the date, month or year of the occasion or the place where I met him before he came to the Wakfnama. I did not see him after he took down my father's signature on the Wakfnama. I do not know his home address. I had never been to his home. On the first day he came with 10 or 12 plain papers at about 9 or 10 A. M. and waited till evening that day. He sat in the shop of my father the whole day. He was literate. The draft may be in our house. As Nanabati did not ask me about the draft I did not tell him about it. Husain Naskari(?) took away the draft on the 1st day and brought it with papers on the 2nd day. I do not remember at what time he came on the 2nd day or how long he stayed on that day. He used to come in the morning at 9 or 10 A. M. I do not remember when he left on that day. He came in all 5 or 6 days. After the draft was written out my father fair-copied it in bold types slowly for 6 or 7 days. My father wrote the Wakfnama for 4 or 5 days. The draft was written by him on one or two days at the dictation of Husain Askari. I do not remember if the schedule of properties was written in the draft or not during the 4 or 5 days when my father fair-copied it. Husain Askari used to come but he was absent for a day or two. He took away the fair copy but I do not remember if he took away the draft also. On the very next day he came to my father but I do not remember at what time. He stopped there for about an hour. On that day he brought a plain piece of paper and asked my father to write some more matter. He did not bring the Wakfnama on that day. He took that paper on that day after it was written by my father. On the next day he again came. I have no idea about the time he came on that day and when he left the place. He waited there for a short time—on that day no matter was written. My father signed on that day. At first he refused but afterwards signed. I saw that paper on that day. I do not know Kamar Kader's signature. I never saw him sign. I kept nothing in writing about the conversation between my father and Husain Askari. The latter was an old and fat and stout man at that time. I cannot say the length and breadth of my shop. Its frontage is about 7 or 8 or 9 cubits long. The shop is 10 or 12 cubits wide. There is another room on its back. It is about 6 or 7 cubits long × 5 or 6 cubits wide. In it medicines

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiff No. 2.

No. 87. Abdul Quaem, witness No. 13.

are kept. In the front room also medicines are kept. Husain Askari had the draft written out in the shop room. I cannot say if my father went to his house at any time. There is nothing to prohibit his going there. Husain Askari was a famous man. I knew him from the time he was a tutor of the Pprinces. There were many houses of Princes at Metiabruz then such as Prince Dilwar Jah, Prince Ibrahimali Mirza and Prince Subdar Jah and others. The latter is a Prince but I do not know if he was respected by others. The Prince Dilwar Jah was respected by all. Prince Sultan Mirza was respected by all. I know the three sons of Prince Ibrahimali Mirza. I know names of two of them, *viz*., Shaddan Saheb and Abedali Mirza. I do not know the name of their third brother. They are also Princes of respectable family. I know Mufti Saheb. He is a Maulvi. He must carry much respect. The remaining portion of the Wakfnama was never brought by Husain Askari. The five lines on the top of last page of the Wakfnama were written by my father on the 2nd day of arrival of the latter. I do not know the signature of Khadem Hossain. I never saw Saheba Khatun. My father wrote deeds of many persons. People used to come to him for getting their deeds written by him. He was not a professional deed writer. He was a good penman. So people got their deeds written by him. I cannot say if he charged anything for it or if he got any fee for writing the Wakfnama. I do not remember which deed he wrote last and in which year. I do not remember now anything about any other deed written by him than the Wakfnama. He never wrote any document at Kidderpur. He used to frequent that place but never stayed there for 4 or 5 days. He came and left that place on the same day except on one occasion when my maternal grand-father fell ill and he stayed there for 1 or 2 days. My maternal grandfather died after suffering for 2, 4 or 6 months but when I do not remember. I was then 20 or 21 years old. My father used to come and stay for 1 or 2 days during the period of my maternal grandfather's illness when he closed his shop at iron gate and opened a shop at Srikissen's house and closed it after sometime. I used to remain at Metiabruz and my father went to live at his father-in-law's house at Kidderpur. I do not remember when the iron gate shop was closed. I was then 17 or 18 or 19 years old. I do not remember the year in which the shop at Srikissen's house was closed. My present shop was started shortly before, next says after death of my father. My father died at Diwannagar. It is not a fact that I was driven out by him because of my bad conduct. When he made over the Wakfnama to Husain Askari after fair-copying it the papers were loose and not stitched up together.

N. Banerjee,
Offg. Sub-Judge.
18-5-35.

Abdul Quaem.

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No. 88.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

No. 88. Verified petition on behalf of the defendants for using in evidence the deposition of Syed Altaf Hossain Mufti Saheb taken on commission in Title Suit No. 120 of 1930, filed on the 17th May, 1935.

Nos. 233-235.—Verified petition on behalf of the defendants for using in evidence the deposition of Syed Altaf Hossain Mujti Saheb taken on commission in Title Suit No. 120 of 1930.

By

Syed Ibne Imam,

Pleader.

In the Court of Third Additional Subordinate Judge at Alipore, 24-Parganahs.

Title Suits Nos. 1 and 2 of 1934.

"A"

The humble petition of Nawab Jahan Ara Jafri Begum and another Mutwalli defendants in the abovenamed suit

Most Respectfully Sheweth :—

1. That your petitioners cited Syed Altaf Hossain Mufti Saheb as witness and that on the service of summons he produced a medical certificate expressing his inability to attend Court.

2. That thereupon your petitioners applied for his examination on commission which was contested and your honour was pleased to direct your petitioners to have the said witness examined by the Civil Surgeon before he can be examined on commission.

3. That your petitioner tried to have the witness examined by the Civil Surgeon but he is putting it off day to day on some pretext or other his main pretext being that unless the fortieth day ceremony after Muharam was over he would not submit to medical examination.

4. That your petitioner believes that the witness has been influenced by the other side and kept out of the way and will not give his evidence.

5. That the said witness was examined on behalf of Md. Elias in Title Suit No. 120 of 1930, 4th Sub-Judge's Court Alipore and was cross-examined by the plaintiffs.

6. That the evidence taken on commission in the aforesaid suit may be taken in the present suit.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

No. 88. Verified petition on behalf of the defendants for using in evidence the deposition of Syed Altaf Hossain Mufti Saheb taken on commission in Title Suit No. 120 of 1930, filed on the 17th May, 1935.

Therefore your petitioners pray that the Court may be pleased to take the evidence of the said Serajul Ullama Mirza Altaf Hussain Mufti Saheb taken on commission in the aforementioned suit is evidence in the present suit and pass such other order as may be found fit and proper.

And your petitioner as in duty bound shall ever pray.

M Mokram Ali.

(On the margin).

Put up on Monday next after plaintiffs 1 and 1a file their objection supported by an affidavit.

N. B.,
S. J.
18-5-35.

Affidavit.

I, Mokram Ali, son of late M. Wazid Ali, aged about 37 years, by faith Mussalman, by occupation service-holder, residing at 11, Rangalal Street, Kidderpore, P. S. Watgunj, 24-Parganahs, hereby solemnly declare and affirm as follows :—

1. That I am the Tadbirkar of the defendants Nos.—and as such I am conversant with all the facts of the case. This is true to my knowledge.

2. That the statements contained in paras 1, 2, 3, and 5 of the petition marked "A" for identification are true to my knowledge and those contained in para 4 are true to my information and belief and those contained in para 6 are true to my submission.

Dated the 17th May 1935.

M. Mokram Ali.

Known to me.
Birendra Nath Kanthal,
Pleader's clerk,
Card No. 43.
17-5-35.

Solemnly affirmed before me this day.
(Illegible),
Commissioner of Affidavits.
17-5 35.
(3rd Sub-Judge's Court,
24-Parganas.)

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No. 89.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 475-476—Deposition of Mr. Jogesh Chandra Ray Choudhury, witness No. 14 for plaintiff No. 2, dated the 18th May, 1935.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for plaintiff No. 2.

No. 89. Mr. Jogesh Chandra Roy Chowdhury, witness No. 14.

Deposition of witness No. 14 for the plaintiff No. 2 taken on solemn affirmation on the 18th day of May, 1935, before Babu Nikunja Behari Banerjee, 3rd Addl., Sub-Judge, Alipur.

My name is Jogesh Chandra Ray Choudhury, son of late Purna Ch. Ray Choudhury. My age is 50 years, I reside at 25, Sasthitola Road, Kidderpore, Dist. 24-Parganas. My occupation is Pleadership.

Examination.

I have been pracitising as a pleader of the District Judge's Court at Alipur from 1911. Seeing the written statement filed in T. S. No. 158 of 1920, witness says that it was filed by him on behalf of Juhi Begum. It bears my signature. It is typed. It is marked Ext. 28. Seeing the Wakalatnama filed witness says that it was filed by him and that the endorsement on its back is in his handwriting. It is marked Ext. 26B. The printed copy of Wakalatnama was filled up by my clerk Basanta Kumar Chakravartty. It bears a thumb impression but whose it is I do not know. It was made over to me by Hashem Ali Khan husband of Juhi Begum. I filed it in Court on latter's behalf. I know the handwriting of my clerk. The Wakalatnama is marked Ext. 26C. I was satisfied that this was the Wakalatnama duly executed by Juhi Begum.

Cross-examination.

Cross-examined by pleader for defendants Nos. 3 and 4:—As Husain Ali Khan delivered the Wakalatnama to me I have no other reason to say that it was duly executed by Juhi Begum his wife. I have no independent recollection of the circumstances under which the Wakalatnama was handed over to me for filing it in Court. Juhi Begum did not put her thumb-impression in my presence. I had nothing to do with her thumb-impression. I did many things in the suit as a pleader for Juhi Begum for a very long-time and subsequently also on behalf of Haji Ala Bux. I remember that Juhi Begum was a defendant in the suit and Haji Ala Bux was substituted as a plaintiff in the suit in place of Amir Begum. The latter withdrew from the suit. Juhi Begum did not defend the suit. I do not remember who gave me instructions for drafting the written statement of Juhi Begum, most probably her husband did it.

N. Banerjee,
Offg. Sub-Judge.
18-5-35.

Jogesh Ch. Ray Choudhury.

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No. 90.

Nos. 477-478—*Deposition of Mr. Jitendra Kumar Chowdhury, witness No.* 15 *for plaintiffs Nos.* 1 *and* 1(*a*), *dated the* 20*th May*, 1935.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiffs Nos. 1 and 1(a).

No. 90. Mr. Jitendra Kumar Chowdhury, witness No. 15.

T. Suits Nos. 1 and 2 of 1934.

10

Deposition of witness No. 15 for the plaintiffs 1 and 1(a) taken on solemn affirmation on the 20th day of May, 1935, before Babu Nikunja Behari Banerjee, 3rd Addl., Sub-Judge of Alipur.

My name is Jitendra Kumar Choudhury, son of Brajendra Kumar Choudhury. My age is 36 years. I reside at 182D, Muktaram Babu's Street, Dist. 24-Parganas. My occupation is Pleadership. Examination.

20

I have been practising as a pleader of Alipur Bar for 7 or 8 years. I am appearing as a pleader for the widow and son of Syedali in T. Suits Nos. 1 and 2. Babu Satis Chandra Ghose and Bimal Ch. Ganguly pleaders are appearing for the daughters of the latter in these suits. Seeing an application dated 8th March, 1935 filed in T. S. No. 6 of 1934 of Court of 3rd Sub-Judge of Alipur witness says that it was filed by him on behalf of the daughters of deceased Syedali plaintiff as his heirs on his death and that it bears his (witness') signature. It is typed. It is marked Ext. IX. As it appears from the plaint of that suit Syedali was the plaintiff in that suit. By the
30 aforesaid application the suit brought by plaintiff Syedali was compromised. Yusuf Mirza constituted attorney for the daughters of Syedali and husband of one of them instructed me to file this application on behalf of the daughters and he signed it also. This is the Wakalatnama filed by me. It bears my signature. The endorsement on its back is in my handwriting. The Wakalatnama is also signed by Yusuf Mirza in my presence. He signed compromise petition also in my presence. It is marked Ext. X. Seeing the plaint of suit. No. 6 of 1934 aforesaid witness says that it appears from it that it was filed by pleader Satis Chandra Ghose. I do not know his signature. I never saw him write or sign. I sit on the back bench in this Court
40 room during the hearing of these suits. Babu Satis Ch. Ghose was present in this Court room before I came to the witness-box.

Cross-examined by pleader for defendants Nos. 3 *and* 4:—I did not appear in any other case for the daughters of Syedali. I received no direct instrucrions from them. I had never been to their place. Mr. Yusuf Mirza got a petition ready and asked me to sign. I am not responsible for its Cross-examination.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiffs Nos. 1 and 1(a).

No 90. Mr. Jitendra Kumar Chowdhury, witness No. 15.

contents. I do not know what was the result of that petition. I had to appear on another day with the power of attorney of Yusuf Mirza in connection with its inspection by the Court but the case was adjourned on that day. I did not show it to the Court.

N. Banerjee,
Offg. Sub-Judge.
20-5-35.

Jitendra Kumar Choudhury.

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No. 91.

Nos. 479-482—Deposition of Mr. Bimal Chandra Ganguli, witness No. 16 for plaintiff No. 2, dated the 20th May, 1935.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiff No. 2.

No. 91. Mr. Bimal Chandra Ganguli, witness No. 16.

Examination.

T Suits Nos 1 and 2 of 1934.

Deposition of witness No. 16 for the plaintiff No. 2 taken on solemn affirmation on the 20th day of May, 1935, before Babu Nikunja Behary Banerjee, 3rd Addl., Sub-Judge of Alipore.

My name is Bimal Ch. Ganguly, son of Rai Bahadur Gopal Ch. Ganguly. My age is 35 years. I reside at 58, Hindusthan Park, Ballygunj, District 24-Parganas. My occupation is pleadership.

I am a pleader of Alipur bar. I have been practising in Alipur Civil Court since September, 1926. I appear as one of the pleaders for the daughters of Syedali in these two present suits and Mr. Satis Chandra Ghose is my senior. Before the death of Syedali defendant both Satis Chandra Ghose and I appeared for him in these two suits. And during the lifetime of Syedali I appeared for him as Mutwalli in several of his suits before and in most of those cases along with Satis Chandra Ghose. I know Makram Ali who appeared as a witness in these cases. He is Tahsildar of the Wakf Estate. He has given his evidence in this case. Seeing the Wakalatnama filed on behalf of plaintiff Syedali in suit No. 6 of 1934 witness cannot say who filled up the printed form of the Wakalatnama. I have seen Mr. Satis Chandra Ghose write and sign many times. The endorsement on the back of the Wakalatnama is in his handwriting and is signed by him. I accepted the power as well as Satis Chandra Ghose. I have signed it after writing the words 'I have accepted'. The endorsement is marked Ext. Xa. I do not exactly remember but so far as I remember, the Wakalatnama was delivered to me by Sudhir Baidya clerk of Satis Babu pleader. That clerk is dead. As I was asked to accept it I accepted it without being satisfied that it was duly executed. I did not make any independent inquiry as regards whether it was duly executed or not. Generally when a Wakalatnama is handed over to me by its executant or his agent I make necessary enquiry but when a pleader or his clerk makes over the power after making necessary endorsement after acceptance I generally do not make any enquiry as I take it for granted that it must have been duly executed. The burden is on him who first writes and signs the endorsement. In this particular case I was thoroughly satisfied that it was duly executed and that it is in order as it bore the endorsement of Satis Chandra Ghose the senior pleader duly signed by him. This endorsement shewed to me that Satis Babu had been satisfied as to the execution of the

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiff No. 2.

No. 91. Mr. Bimal Chandra Ganguli, witness No. 16.

Wakalatnama. I have no independent recollection as to whether I took any part for Syedali in that suit. Seeing the plaint of that suit witness says that Satis Babu signed and filed it and that every page of it bears his signature. The two lines in the last page of the plaint written by me just above the verification are in my handwriting. The rest is typed. Certain lines on the first page of the plaint are also written by me and are initialled by Satis Babu. All other corrections or additions in other pages of the plaint are in my handwriting and bear Satis Babu's initials. In the final preparation of the plaint I had a hand. The summons was filled up probably by Biren a registerd clerk of Jogesh Babu pleader son-in-law of Satis Chandra Ghose, who works for pleader Moulvi Ibne Imam. The latter is a pleader for defendants Nos. 3 and 4 daughters of Syedali and was a pleader for Syedali formerly. This duplicate copy of the plaint is in my handwriting and bears my signature. It is marked Ext. VIII. Copy of summons Ext. VII(?) accompanied Ext. VIII. The correction in the last page above the verification in the copy of plaint served upon the defendants is in my handwriting. Mr. Satis Chandra Ghose is not present in this Court-room now.

Cross-examination.

Cross-examined by pleader for defendants Nos. 3 *and* 4: I have no knowledge as to the contents of the endorsement Ext. Xa. Satis Babu pleader is my senior and I act under him. I generally accept all Wakalatnamas which are accepted by him. I was not present when the Wakalatnama in question bearing Xa was delivered to him. I never appeared in any of the personal cases of Syedali, so far as I remember. I was not in charge of the Suit No. 6 of 1934. My senior Satis Babu was in charge of it. From the record of the suit I say that its proceedings were stayed by High Court. I filed a Hajira on behelf of plaintiff Syedali on 5th April, 1934 in that suit. Before that I accepted the Wakalatnama on his behalf and signed the copy of the plaint and filed it in Court. Except these acts I probably did nothing else in that suit. I did not see Syedali in this connection. I do not know whether the plaint was read over and explained to the plaintiff Syedali. I never saw the latter write or sign. But I have seen his signatures in other Wakalatnamas and written statements in connection with other suits. I have faint recollection of such signatures. Such signatures were legible but the plaint and Wakalatnama bear signatures which are illegible.

N. Banerjee,
Offg. Sub-Judge.
20-5-35.

Bimal Chandra Ganguli, Pleader.

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No. 92.

Nos. 483-485—*Deposition of Mr. Satya Ranjan Sinha, witness No.* 17 *for plaintiffs Nos.* 1 *and* 1(a), *dated the* 20*th May* 1935.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

T. Suits Nos. 1 and 2 of 1934.

Evidence for plaintiffs Nos. 1 and 1(a).

No. 92 Mr. Satya Ranjan Sinha, witness No. 17.

Deposition of witness No. 17 for the plaintiffs Nos. 1 and 1(a) taken on solemn affirmation on the 20th day of May 1935, before Babu Nikunja Behari Banerjee, 3rd Addl. Sub-Judge of Alipore.

Examination.

My name is Satya Ranjan Sinha, son of late Radha Raman Sinha. My age is 47 years. I reside at 72/5B Bodle Road, District 24-Parganas. My occupation is pleadership.

I am a pleader of Alipur Bar. I have been practising in the Civil Courts at Alipur for about 17 or 18 years. So far as I remember, I attended some commission sittings in a case to which Prince Kamar Kader was a party. I sent a letter to him on behalf of his wife, as far as I remember. Seeing the certified copy of the letter witness says that the date of the letter is 18th June 1917, that it is in regard to the demand for Rs. 6,25,000 as prompt portion of her dower. It does not show the total amount of her dower. The previous demand referred to in it was made by a previous letter dated 3rd June 1917. This is the certified copy of the letter sent to Kamar Kader by me on behalf of Amir Begum. The certified copy is marked Ext. XI, postal acknowledgment receipt bears my signature and handwriting as a sender of a registered letter. It was received from the post office. It is marked Ext. XII. I cannot say if it bears Kamar Kader's signature. I cannot say at this distant time if it bore that signature when I received it from the post office. I was examined in a case in connection with the letter of which XI is a certified copy. From the note in the certified copy I find that it was claim cases Nos. 10 and 11 of 1929 and it was marked Ext. A on 15th February 1930. It may be that I was examined on 15th February 1930. I find another note in Ext. XI that in T. S. No. 41 of 1921 of 3rd Sub-Judge's Court it was marked Ext. 18 on 20th August 1925. I cannot recollect if I was examined on that date also in that case.

Cross-examination.

Cross-examined:—I did not see Amir Begum. I went to her house and received instructions from her officer who was her agent. I don't remember his name. The letter of 3rd June 1917 was not sent by me, as far as I remember I was informed of that letter from Amir Begum's agent. I know Nawab Hashem Ali Khan. He was not present when I received instructions.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

Evidence for plaintiffs Nos. 1 and 1(a).

No. 92. Mr. Satya Ranjan Sinha, witness No. 17.

I don't remember the number of the house on Circular Garden Reach Road where I went. I do not know what was the dower of Amir Begum. I do not recollect if I got a reply to my letter sent to her husband. Seeing the cover witness says that it relates to a registered letter addressed to me. I do not remember to whom I made it over or the letter contained in it was in reply to my letter. It bears postal stamp date 23rd June 1917. I do not remember to have written any other letter on behalf of any member of the royal family of Oudh in my career as a pleader. There is no letter inside the cover. In its absence I cannot say if the letter contained in it was a reply to my letter. Perhaps I was attend(*sic*) commission sittings in a case on behalf of Juhi Begum. I do not remember the number of that case.

N. Banerjee,
Offg. Sub-Judge.
20-5-35.

Satya Ranjan Sinha.

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No. 93.

Nos. 239-241—Verified petition of objection on behalf of the plaintiff Mahmuda Bibi to defendants' petition for using in evidence the deposition of a certain witness in the present suits.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

No. 93. Verified petition of objection on behalf of the plaintiff Mahmuda Bibi to defendants' petition for using in evidence the deposition of a certain witness in the present suits, filed on the 20th May, 1935.

Filed by
J. N. Mitra,
Pleader.

In the Court of the Third Additional Subordinate Judge at Alipore, 24-Parganas.

Title Suits Nos. 1 and 2 of 1034.

The humble petition of Mahmuda Bibi plaintiff in the above case

Most respectfully sheweth :—

1. That the defendants 3 and 4, daughters of the deceased defendant Mirza Md. Sayed Ali have examined lots of witnesses covering a long period and on 16th May 1935 at about 3 P. M. they put in an application stating the name of the witness whom they wished to examine for a short while the next day and that he was their last witness and tendered certain papers with a view to use them in evidence.

2. That on 17th May 1935 the said defendants did not examine the said witness and closed their case and a witness on behalf of the defendants 1 and 2, son and widow of Mirza Md. Sayed Ali, was examined on their behalf and he was cross-examined by the defendants 3 and 4.

3. That thereafter your Honour's petitioner was called upon to tender evidence by way of rebuttal for which liberty had already been given to them by the Court.

4. That the aforesaid plaintiff had examined one witness and when the examination-in-chief of the other witness was about to be finished the defendants 3 and 4 at 5 P. M. on 17th May 1935 put in an application for tendering the deposition of a person whom they alleged to have cited as a witness in the case.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

No. 93. Verified petition of objection on behalf of the plaintiff Mahmuda Bibi to defendants' petition for using in evidence the deposition of a certain witness in the present suits, filed on the 20th May, 1935.

5. That the defendants when they first began to examine witnesses put in an application for examining the said witness on commission.

6. That the said defendants made similar efforts in 1932 in respect of the said witness but it was subsequently not allowed.

7. That this time when objection was taken the Court was pleased to direct them to produce medical certificate of the Civil Surgeon of 24-Parganas within three days, but they took no steps towards the same.

8. That the present application of the defendants is not a *bonafide* one and is not maintainable in law, inasmuch as the evidence was given in a case in which your petitioner was not a party.

9. That the witness has not been kept out of the way by your Honour's petitioners and the allegation to that effect is maliciously false.

10. That the said witness lives within the jurisdiction of this Court and that he meets the defendants.

11. That it is no ground to tender his deposition in question simply because he is not submitting himself to the examination of the Civil Surgeon.

12. That the said witness is hale and hearty and no step was previously taken by the defendants to get his appearance in Court.

In the circumstances your Honour's petitioners submit that the deposition of the witness in question is inadmissible in evidence under Section 33 of the Evidence Act *i. e.*, Act I of 1872 and as such their prayer to that effect should be disallowed.

Kasim Hoosain Nanavati.

Affidavit.

I, Kasim Hossain Nanawatty, son of Hazi Hossain Mahammad Nanawatty, aged about 34 years, by caste Musalman, by occupation landholder, residing at 16/A, Blockman Street, Calcutta, do hereby solemnly affirm and say as follows:

1. That I am a maternal uncle of the plaintiff and look after her cases and as such I am fully acquainted with the facts of the case.

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2. That the statements made in the petition marked "A" and annexed herewith mostly matters of record, are true to my information and belief and I believe them to be true.

Kasim Hossain Nanawatty,

Known to me and explained by me.

Bibhuti Bhusan Bhattacharjee,

Pleader's Clerk, No. 93.

Dated 20-5-35.

Solemnly affirmed before me this day.

(Illegible),

Commissioner of affidavits,

20-5-35.

2nd Sub-Judge's Court,
24-Parganas.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

No. 93. Verified petition of objection on behalf of the plaintiff Mahmuda Bibi to defendants' petition for using in evidence the deposition of a certain witness in the present suits, filed on the 20th May, 1935.

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No. 94.

No. 242—Petition on behalf of the substituted plaintiffs for directing the defendants to produce the acknowledgment receipt of the demand letter of Amir Begum for prompt dower.

Filed by
Amulya Krishna Mitra,
Pleader for the plaintiff.

In the Court of the 3rd Additional Subordinate Judge of 24-Parganas at Alipore.

Title Suit No. 2 of 1934.

Syed Mahammad Hashim Ali Khan and others ... *Plaintiffs,*

versus

Juffri Begum and others ... ... *Defendants.*

The humble petition of the substituted plaintiffs in the suit

Respectfully sheweth :

1. That it transpires in the evidence already adduced in the case that a notice demanding prompt dower was served on the late Prince Kamar Kader on behalf of Shah Bahu Nawab Amir Begum. The original notice was received by the said Prince duly as appears from the postal receipts and also from the acknowledgment granted by him to the post office filed in the case.

2. That the said Prince being dead and the defendants in this suit being his representatives *i. e.*, heirs of the deceased Prince's only son and male heir who looked after his estate, the said notice must be presumed with him.

Under the circumstances your petitioners pray that your Honour may be pleased to order the defendants to produce the said notice (original) being a letter addressed to the late Prince Kamar Kader Mirza Mahammad Abed Ali Bahadur by pleader Babu Satya Ranjan Sinha dated 18th June. 1917 and on their failure to produce to mark the certified copy of the same as an exhibit.

And your petitioner as in duty bound shall ever pray.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suit No. 2 of 1934.

No. 94. Petition on behalf of the substituted plaintiffs for directing the defendants to produce the acknowledgment receipt of the demand letter of Amir Begum for prompt dower, filed on the 20th May, 1935.

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No. 95.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Nos. 39-79—Judgment of the 3rd Addl. Subordinate Judge, 24-Parganas in Title Suits Nos. 1 and 2 of 1934.

Title Suits Nos. 1 & 2 of 1934.

No. 95. Judgment, dated the 13th June, 1935.

Decision in Original Suits.

District 24-Parganas.

In the Court of the 3rd Additional Subordinate Judge, Alipore.

The 13th day of June, 1935.

Title Suits Nos. 1 and 2 of 1934.

Nawab Syed Md. Husain Ali Khan and others of 14 Deoulshi Lucknow ... *Plaintiffs in T. S. No. 2 of 1934.*

versus

Iffatora Hussendi(?) Begum and others of 135, Circular Garden Reach, P. S. Watgunge, Dist. 24-Parganas ... ... *Defendants in T. S. No. 2 of 1934.*

Khatija Bibi of 8A, Amratala Lane, Calcutta.. *Plaintiff in T. S. No. 1 of 1934.*

versus

Syed Ara Hamida Begum and others of 123, Circular Garden Reach Road, P. S. Watganj, Dist. 24-Parganas ... *Defendants in T. S. No. 1 of 1934.*

T. S. No. 2 of 1934 is instituted by Juhi Begum *alias* Nawab Zinnat Ara Begum for partition in respect of her $\frac{1}{3}$rd share in the properties mentioned in the plaint schedule as heir of her father late Prince Kamar Kader Mirza and for separate possession thereof and for recovery of *mesne* profits with interest from the defendants. T. S. No. 1 of 1934 is brought by Khatija Bibi to set aside the summary decision dated 15th February, 1930 of the 4th Subordinate Judge's Court at Alipur in a claim case instituted by late Mirza Muhammad Syed Ali and to have a declaration that Juhi Begum the judgment-debtor in Ex. Case No. 146 of 1929 is the owner of $\frac{1}{3}$rd share in the disputed properties and that her said share is liable to attachment and sale in execution of the decree obtained by Kasem Ibrahim Shailiji aguinst her for Rs. 1,28,000 with costs and interest in High Court Suit No. 1515 of 1918.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

No. 95. Judgment, dated the 13th June, 1935.

The case of Juhi Begum original plaintiff in T. S. No. 2 is that Prince Kamar Kader Mirza who was a Shia Mohammedan and a son of late Prince Wajidali Shah Ex-King of Oudh residing at Metiaburz in Calcutta died on 31st January, 1919 leaving a widow Amir Begum, a son Mirza Muhammad Syedali and her a daughter, that before his death he had executed two leases of his properties dated 11th January, 1916 and 12th July, 1916 in favour of his concubine Saheba Khatun for 3 and 10 years at rentals of Rs. 1,500 and Rs. 500 respectively, that to defeat his wife Amir Begum's claim of Rs. 3,15,000 for dower from the prince and to defraud her Saheba Khatun got a Wakfnama executed by him on 14th June, 1917 alleging the leases, that the said Wakfnama is fraudulent, spurious and void in law, that plaintiff has inherited ⅓rd share in all the properties left by her father late Prince Kamar Kader as his heir, that she claims exclusive possession of some of the properties in the annexed schedule to the plaint and joint possession of other properties and that she is entitled to get separate possession of such properties by partition and to recover *mesne* profits from the defendants. Both Juhi Begum plaintiff in Suit No. 2 and defendant No. 2 in Suit No. 1 and her brother Mirza M. Syed Ali defendant No. 1 died on 17th April, 1931 and 11th June, 1934 respectively during the pendency of the suits. Former's husband Nawab Husain Ali Khan plaintiff No. 1 has been substituted in her place as her heir by right of inheritance in suit No. 2. Syed Ashiq Hosain plaintiff No. 1 and Mahmuda Bibi plaintiff No. 2 have been added as assignees in that suit. Plaintiff No. 1a claims ⅛th share by virtue of an assignment alleged to have been made by husband of Juhi Begum. Plaintiff No. 2 claims the entire share of Juhi Begum on the basis of a deed of assignment alleged to have been executed by the latter before her death in her favour in February, 1934. On the death of Mirza M. Syedali who was defendant No. 1 in both suits in personal capacity and defendant No. 2 in T. S. No. 2 in his capacity as a Mutwalli in respect of the Wakf properties his widow Hamidi Begum defendant No. 1a, his minor son Wahedali Mirza defendant No. 1d represented by her guardian mother and his two daughters Jafri Begum and Sadoga Begum defendants Nos. 1b and 1c have been substituted in his place as his heirs. On the death of Juhi Begum defendant No. 2 in Suit No. 1 her husband and brother Syedali have been substituted. On the subsequent death of the latter his heirs have been added in that suit as defendants.

Both the suits are contested by the daughters and minor son of Syedali. Suit No. 1 is also contested by defendant No. 2a husband of Juhi Begum. The main defence of Syedali's daughters in the two suits is that Prince Kamar Kader created a Wakf of disputed property by a registered deed dated 14th June, 1917 making himself as 1st Mutwalli, his son Syedali as 2nd Mutwalli and the son and daughters of the latter as next Mutwallis, that their brother being minor the Mutwalliship will remain in abeyance till attainment of his majority, that the Wakfnama is genuine and valid, that plaintiffs in Suit No. 2 having no title cannot bring the suit for partition, that the deed of assignment alleged by plaintiff No. 2 is spurious, fraudulent and void for want of consideration, that Suit No. 2 is barred by limitation, that the Suit No. 1 is not

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maintainable as Juhi Begum had no interest in the Wakf property as heir of her father and that Wakf property is not attachable in execution of a decree against her. Although defendant No. 2a Nawab Hashem Ali Khan husband of Juhi Begum has not filed any written statement in Suit No. 1 he contends by a petition filed on 26th March, 1935 during trial that the alleged Wakfnama is not genuine, that the High Court decree against the wife is bogus and fraudulent, that her property is not attachable in execution thereof; that Hashem Ibrahim Shailiji husband of Khatija Bibi plaintiff in Suit No. 1 and father of added plaintiff No. 2 in Suit No. 2 has purchased the High Court decree in the name of his wife and has instituted the Suit No. 1 and is prosecuting it in her name and that there is no cause of action against him. Other defendants do not appear though duly summoned.

Both the suits are tried together at the request of both parties with their consent for the sake of convenience *vide* Order No. ——dated——.

Upon the above pleadings following issues have been framed:

(a) Common in both suits:—

1.—Have the plaintiffs any cause of action?

2.—Are the suits maintainable in their present form?

3.—Are the suits barred by limitation?

4.—Are the suits bad for defect of parties?

5.—Are the suits barred by *resjudicata*?

6.—Are the suits barred by waiver, acquiescence and estoppel?

7.—Are the suits properly valued both for the purpose of jurisdiction and Court-fees?

8.—Are the suits properly instituted? Are the plaintiffs at all aware of the suits and are the plaints signed and verified by them?

9.—To what reliefs, if any, are the plaintiffs entitled?

(b) in Suit No. 1:—

10.—What was the share, if any, of defendant Juhi Begum in the property in suit and is it liable to attachment and sale in execution of plaintiff's decree against defendant Juhi Begum or her heirs?

11.—Is the summary decision dated 15th February 1930 liable to be set aside?

12.—Can the suit proceed under Section 10 of C. P. Code?

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

No. 95. Judgment, dated the 13th June, 1935.

13.—Are the properties in suit covered by the Wakfnama dated 14th June 1917 executed by the late Prince Kamar Kader Bahadur? Had the defendant Juhi Begum any share in the same after the death of her father? If so, to what extent?

14.—Is the claim in High Court Suit No. 1515 of 1918 false and fraudulent and is the alleged *ex parte* decree passed therein bogus and obtained by suppression of summons?

15.—Is the plaintiff a Benamdar of the insolvent Hashem Saliji? Did the insolvent obtain any decree against defendant Juhi Begum which vested in the official assignee and did the latter sell the said decree to the plaintiffs?

16.—Is the suit bad for multifariousness and misjoinder of causes of action?

17.—Is the suit barred under Section 42 of the Specific Relief Act?

18.—Is the plaintiff entitled to the reliefs prayed for?

(c) in Suit No. 2:

19.—Had the original plaintiff Juhi Begum any right, title and interest to or in the property in suit? If so, what was her share in the said properties and was she in possession?

20.—Is the deed of assignment in favour of Mahmuda Bibi by Juhi Begum genuine, valid and for consideration? If so, is Mahmuda Bibi entitled to be the sole plaintiff in the suit?

21.—Is Hashemali Khan competent to remain in the category of plaintiff in the suit and is he entitled to any relief prayed for by the original plaintiff Juhi Begum?

22.—Has the defendant Mirza Syedali acquired any title to the properties in suit by adverse possession?

23.—What are the respective shares of Mahmuda Bibi and Mirza Syedali in the properties in suit?

24.—Is Mahmuda Bibi entitled to the reliefs prayed for by the original plaintiff Juhi Begum and to get a decree for partition and separate possession of the same?

25.—Is the conveyance (deed of assignment) set up by the added plaintiff a genuine and *bona fide* document and for proper and full consideration? Was the said document executed by Juhi Begum with full knowledge of the contents thereof? Were its contents fully explained to her and did she understand them and the full effect thereof upon her? Had she any

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proper or independent advice in the matter? Was the said document executed under any undue influence, coercion or pressure of any kind? Is the said deed of assignment legally valid? If not, is Mahmuda Bibi entitled to be added as a plaintiff?

26.—What was the physical and mental condition of the late Prince Kamar Kader Bahadur at the time of execution of the aforesaid Wakfnama? Was he then possessed of full power of understanding and capable of managing his own business? Did the Prince execute the said document of his free will, knowing and understanding the full contents thereof, or under extraneous and undue influence?

27.—Was the alleged Wakfnama executed by the Prince with the true and real intention of dedicating the properties in suit absolutely for pious, religious and charitable purposes according to the provisions of Mahomedan Law or as a cloak to defeat or delay the claim of his creditors?

28.—Did the Prince relinquish the properties and give up and transfer possession thereof at the time of execution of the document? Were the salaries etc., reserved for the executant and his heirs reasonable? Was the Wakfnama acted upon by the Prince and his heirs since the execution?

29.—Is the Wakfnama a legally valid and *bona fide* document?

30.—Did the original plaintiff demand partition from the defendants?

31.—To what reliefs, if any, is the plaintiff Mahmuda Bibi entitled?

Decision.

Issue No. 7 :—In Suit No. 2 for partition plaintiffs made an alternative prayer for a decree for recovery of possession of their $\frac{1}{3}$rd share in the disputed properties in case they are held not to be entitled to partition. In view of this alternative prayer the Court by its Order No. 105 dated 10th April, 1934 directed the plaintiffs to pay Court fees on the highest claim by 1st May 1934. To meet defendants' objection plaintiffs have got the plaint amended by deletion of its para. 18 and their alternative prayer (b) in its para. 21: *vide* Order No. 143 dated 21st December 1934. Upon the amended plaint of Suit No. 2 as it stands that suit seems to be properly valued and stamped. The pleaders of contesting defendants during their argument do not press this point regarding both the suits. This point is therefore answered in the affirmative in plaintiffs' favour.

Issue No. 8 :—Juhi Begum's knowledge of the Suit No. 2 is admitted by her second husband Hashemali Khan at page 18 of his deposition. Her

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

No. 95. Judgment, dated the 13th June, 1935.

brother Mirza Syedali appeared in that suit but did not venture to deny before her death that the suit was instituted by Juhi Begum with her knowledge. The power of attorney Ext. 6 executed by Juhi Begum on 19th August, 1923 in favour of Ujir Ali gives him clear authority to institute and defend a suit on her behalf. Ujir Ali P. W. 2 says that the thumb marks on the plaint of Suit No. 2 are those of Juhi Begum herself and that he put his seal mark at the top of every page of the plaint and also below the verification in it as her Ammuktear and filed the plaint on her behalf as such and that the number of her house (No. 11 Rungolal Street) where she was living then and where she subsequently died is incorrectly stated as 4 in the verification instead of 11 as in the top of the plaint. There is no reliable evidence on defendants' side to contradict it. From the evidence of enquiring officer D. W. 3 and from letter Ext. J2 dated 26th March 1931 it does not appear that Juhi Begum was not at 11 Rangolal Street on 30th January 1931. Juhi Begum was admittedly illiterate. No document bearing her signature is produced on the side of the defendants. Ujir Ali is corroborated by pleader Bhupendra Nath Ghose P. W. 1 who says that the plaint had been explained by Ujir Ali and the counsel of Lucknow who drafted it. The plaint was filed on 30th January 1931 about 3½ months before her death on 16th April, 1931. It is provided in Section 196 of the Indian Contract Act that where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority. But during the period from 31st January 1931 to 15th April 1931 no steps were taken by her or on her behalf before her death to disown the acts done by her constituted attorney Ujir Ali on her behalf in filing the plaint and prosecuting the Suit No. 2 (*vide* also 14 Appeal Cases 436, 437) although she was aware of the suit as admitted by her husband Hashemali Khan. Her answers Ext. M to questions put by the officer deputed in connection with her application for commutation of her Wasika pension taken down on 2nd April 1931, 14 days before her death shows her intense desire to be reconciled with her brother Mirza Syed Ali and in it there was no better gesture on her part than an expression of her desire to withdraw all suits that might be against him. Her statements before the enquiring officer during her serious illness in such circumstances should be accepted with great caution. It may be noted that no step was taken from 2nd April 1931 to 16th April, 1931 for withdrawal of the Suit No. 2 if it was not instituted by her with her knowledge as alleged by her in Ext. M. The plaint and the verification have also been signed by her constituted attorney Ujir Ali on the basis of Ext. 6 according to Order 6 Rule 14 of C P. Code. A mistake or an omission in signature in a plaint may be cured afterwards. It is an irregularity which does not make the plaint void. Defendants have failed to discharge their onus on this point by any reliable evidence. On the other hand there is positive evidence on the side of the plaintiffs that the Suits Nos 1 and 2 were instituted by Khatija Bibi and Juhi Begum with their knowledge and were duly signed and verified by them respectively according to law. This point is therefore decided in plaintiff's favour.

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Issues Nos. 16 and 17 and 6:—These issues are not pressed by defendants' pleaders and counsels during argument.

Issues Nos. 26-29:—These are very important issues which should be taken up together for the sake of convenience and upon the decision of which the result of the two suits mainly hinges—Suit No. 2 is instituted by Juhi Begum for partition in respect of her share in the heritance of her father Prince Kamar Kader a son of the ex-king of Oudh and a Shia Mahomedan. The defence in that suit is that in view of a disposition of property by a Wakfnama Ext. R dated 14th June 1917 executed by late Kamar Kader the suit fails. Paragraphs 8 to 12 of the plaint of that suit correspond to paragraphs 11 to 16 of the plaint of Suit No. 1. If the Wakfnama is legally valid both the Suits Nos. 1 and 2 must fail. Its validity is therefore questioned by plaintiffs in both suits and also by defendant No. 2a in Suit No. 1. Plaintiff Khatija Bibi of Suit No 1 also challenges the intelligent execution of the deed by late Prince Kamar Kader. The fact of its execution by Kamar Kader is admitted by all parties when it is alleged to have been procured by undue influence of Saheba Khatun. Plaintiff of Suit No. 1 has failed to discharge the onus that lies heavily on her to prove that Prince Kamar Kader was not in sound state of body and mind at the time of execution of the Wakfnama Ext. R dated 14th June 1917 and was utterly incapable of understanding or executing the deed. Of the attesting witnesses to the Wakfnama including the writer all are dead excepting three, *viz*, Mirza Muhamad Abedali, Prince Sabdar Jah and Mufti Saheb. Of these three gentlemen the first two *viz*. M. M. Abedali and Prince Sabdar Jah have been examined by defendants Nos. 3 and 4 daughters of Syed Ali. They and defendants' witnesses Nos. 9, 11, 22, 19 and 28 disprove the plaintiff's plea that Prince Kamar Kader was physically and mentally unfit on 14th June 1917 at the time of execution of the Wakfnama Ext. R. There is no evidence to show that the Prince was suffering from any disease which made him so unfit at that time. The four medical certificates (Ext. 27 series) of Colonel Deare dated 30th November 1915, 25th June 1913, 20th May 1915 and 26th July 1915 filed by plaintiffs do not support their plea. They were required in a suit pending in High Court in 1913 and 1915 to get some adjournments. P. W. 12 Doctor Rajat Chandra Sen says that he has no personal knowledge of these certificates. P. W. 9 Hashemali Khan says at page 80 of his deposition in his cross-examination on 16th April 1935 that on 8th or 10th January 1919 when he went to Lucknow with Juhi Begum the Prince Kamar Kader was not ill at all. On 11th August 1918 Prince Kamar Kader in his examination on commission admitted having made the Wakf. He was further examined and cross-examined on 15th August 1918, 21st August 1918, 28th August 1918, 5th September 1918, 12th September 1918 and 30th September 1918. D. W. 22 Unsuddowla who is a very respectable witness a member of Calcutta Improvement Trust, a Barrister and a gentleman of position is examined by defendants. He swears that the Prince Kamar Kader was a deeply religious man and expressed his desire to create a Wakf and took the opinion of (torn) B. Chakravarty Counsel and other eminent

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counsels (*vide* Ext. DD dated 20th May, 1917 of Mr. B. Chakravarty) and consulted Husain Askari D. W. 22 and Sujat Ali Beg consul general of Persia who are dead. It is proved that Prince Kamar Kader signed most of the pages of the Wakfnama Ext R except its schedule and pages 11, 19 to 22. The Wakfnama Ext R is a registered document. All its pages are signed and sealed by the Registrar. Syedali also admits in his deposition Ext. 29A that his father consulted him about Wakf. Subdar Jan D. W. 10 at the house of whose sister at No. 8, Marsdon Street Hussain Askari lived also supports defendants' witness No. 22 by speaking of the preparation of the draft. Their evidence clearly shows that the Prince wanted and did execute a Wakfnama such as Ext. R of which Ext, R1 is the translation. It is alleged by plaintiffs in two suits that the Wakfnama Ext. R was procured by Saheba Khatun a concubine of Prince Kamar Kader to defeat the claim of latter's wife Amir Begum on account of dower. But undue influence of Saheba Khatun over the Prince is not specifically stated in the plaint of either suit. From the recitals in the Wakfnama it does not appear that Saheba Khatun was benefited by the deed in any way. The Prince made Wakf of his properties which were then subject to a lease in her favour for a term of 10 years expiring in 1926. He became the first Mutwalli and on his death the Towliat or Mutwalliship would go to his son Mirza Syedali and on his death to his descendants. Para 8 of the Wakfnama provides for allowances payable to Tahsildar Kisori Mohan Bose, Mirza M. Hosain *alias* Achha Saheb and his porter Gayadin on the score of salary and pensions but there is no such provision made for Saheba Khatun specifically in the deed. In para 10 of the Wakfnama there is restriction put on the Mutwalli's power not to lease out the Wakf properties for more than 5 years. The evidence adduced by plaintiffs in these suits is not sufficient to warrant the conclusion that the Wakfnama was executed by Prince Kamar Kader under the undue influence of Saheba Khatun. It is not alleged by them that the Prince executed the Wakfnama to defeat the claims of his creditors other than Amir Begum. It is however contended by the pleaders of plaintiff No. 2a that the Wakfnama was a cloak used by the Prince to shield his properties from the hands of his creditors and that it is invalid under Section 53 of Transfer of Property Act and also according to Mohammedan Law. There is no substance Prince Kamar Kader admittedly used to receive a political pension of Rs. 4,000 per month. Besides that he had an additional income of about Rs. 4,000 from the properties acquired by him. It appears that he was indebted to the extent of not more than a lakh of rupees in 1917 as shown by the decree for about Rs. 18,000 obtained by Prince Babar, Prince Dilwarja, Prince Ibrahim Ali Mirza his step-brothers against him in an administration suit in 1917 prior to the execution of the Wakfnama Ext. R (*vide* Ext. 2C) and the decree for about Rs. 5,500 obtained by Mr. and Mrs. Remfry against him as admitted by his son Syedali in paras 5 to 9 in his plaint in T. S No. 6 of 1934. But of those decree-holders Prince Ibrahim Ali, Dilwaja and Sultan Mirza were attesting witnesses to the Wakfnama. This is very significant. They can hardly be expected to become attesting witnesses to a deed if it was intended by its executant to defraud them and other creditors. When the insolvency

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Case No 10 of 1918 instituted by one of the creditors against the Prince Kamar Kader was compromised after the date of the Wakfnama, Ext. R, Saheba Khatun returned to the Prince G. P. notes of Rs. 1,58,000 for payment to his creditors: *vide* the order of District Judge Ext. FF2 dated 7th January, 1919. In the affidavit Ext. CC dated 5th November, 1918 filed by Kamar Kader in that case the latter stated that Amir Begum's dower of Rs. 50,000 only was paid up by him by a crown. There was no demand by Amir Begum for her dower during the 40 or 50 years of her married life till 1918 after the execution of the Wakfnama Ext. R. Hashem Ali Khan does not speak of any demand by Amir Begum for her dower before the date of the Wakfnama. M. Toki Manager of the affairs of Amir Begum is alleged to have caused her to make a claim of 12 lakhs of rupees as her dower against Prince Kamar Kader after the date of Wakfanama dated 14th June, 1917: *vide* copy of letter Ext. XI dated 18th June, 1917. There is no evidence to show that Amir Begum sent any previous letter of demand of her dower to the Prince Kamar Kader dated 3rd June, 1917 as alleged in Ext. XI. P. W. 17 Satya Ranjan Sinha says that letter of 3rd June, 1917 was not sent by him and that he was informed of it by Amir Begum's agent. If the Prince Kamar Kader signed the Wakfnama Ext. R of his own accord out of his free will as proved by evidence the plea of plaintiffs that Saheba Khatun got him to sign some pages of the deed to defeat the claim of Amir Begum is negatived as latter's claim was false. Ext. 14 is a certified copy of plaint filed by Amir Begum in T. S. No. 158 of 1920 on 5th May, 1920 for her alleged unpaid dower after the Prince's death. That suit was compromised by Mirza Syedali by payment of Rs. 35,000 to her mortgagee Ala Bux in respect of her other properties mortgaged to him but not in respect of her dower debt as Amir Begum withdrew from the suit in 1924 (*vide* Ext. FF3). The latter afterwards admits the Wakf in her written statement Ext. AA dated 8th December, 1926 in T. S. No. 29 of 1926. Under Section 53 of Transfer of Property Act the Wakfnama may be voidable (and not void) at the instance of creditors but none of them comes forward to avoid it. Juhi Begum and others who claim through her are bound by the acts of the settlor Kamar Kader in regard to his properties claimed by them as his heirs. Prince Baber was examined on commission by Khatija Bibi in T. S. No. 120 of 1930. He said that the Prince Kamar Kader made a Wakf and that his debts were paid up in full *vide* his deposition Ext. A2. There is no evidence to show, and it is not contended by the counsels of plaintiffs Nos. 1 and 1a and pleaders of Khatija Bibi that the assets of Prince Kamar Kader were not more than sufficient to discharge all his liabilities at the time of execution of the Wakfnama Ext. R. The provisions of Section 53 of Transfer of Property Act in no way offend any rule of Mohammedan Law and therefore apply to the case of Mohammedan Wakf: *vide* A. I. R. 1930 All. 462. 'The Wakf of a person involved in debt is not *ipsofacto* void; it is only voidable if he acts fraudulently to defeat his creditors'; *vide* Mr. Amir Ali's book on Mahomedan Law, Vol. I, page 211. No such dishonest or evil intention on the part of Prince Kamar Kader to defeat his creditors at the time of execution of the Wakfnama is disclosed by evidence during trial. It is rather disproved by the facts that

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his debts were paid up by him subsequently and that some of his alleged creditors who obtained a decree for Rs. 18,000 against him in the administration suit became attesting witnesses to the Wakfnama executed by him. Juhi Begum acquiesced in the validity of the deed as she received stipends under it. The Wakfnama Ext. R is attacked on the following main grounds:—(1) that under colour of Wakf the Wakif or settler has violated the Shia Law by reserving Wakf properties for himself and the Mutwalliship to himself and his descendants, (2) that it is illusory and is not intended to be acted upon and has not been acted on by Wakif or settler in his lifetime, (3) that the property which was the subject of Wakf was not in possession of the Wakif on account of lease in favour of Saheba Khntun and (4) that it is invalid as it was not followed by change of possession indicating divestment of settler's ownership. The four essential conditions as to the validity of a Wakf are laid down in the Suraya the leading Shia authority as follows:— "(1) it must be perpetual, (2) absolute and unconditional, (3) possession must be given of the Mowkoof of the thing appropriated, and (4) it must be entirely taken out of the Wakif or appropriator himself" (Baillie Digest of Pt. II, p. 218). This last restriction has been expressed in direct and homely language by saying that the Wakif must not eat out of the Wakf. The law has been laid down to the same effect in other authorities cited textually by Mr. Amir Ali in his book on Mahomedan Law, Vol. I, 4th Edition, page 218. In the present case the validity of the Wakf created by Prince Kamar Kader is challenged on the ground that it does not comply with the third and fourth of the above conditions. It is necessary for the validity of a Wakf according to Mahomedan Law that there should be no reservation of interest for the Wakif or settler. A man cannot be permitted to do indirectly what he is forbidden to do directly. There is nothing in the Wakfnama Ext. R to the effect that the settler is to get so much out of the profits or usufructs of the Wakf property himself for his own benefit. The Wakfnama Ext. R in question which is dated 14th June 1917 is governed by the Mussalman Wakf Validating Act VI of 1913 which came into force on 7th March 1913. To give that Act a retrospective effect another Act XXXII of 1930 was passed. The effect of it is that the Wakf Act of 1913 applies to Wakfs created before and after 7th March 1913. What is provided in Section 3, Cl., (b) of Wakf Validating Act VI of 1913 does not apply to Shias. Other sections of that Act apply to them. According to Section 3 Cl. (b) of the Act it is not lawful for a Shia Mahomedan to provide for his maintenance and support during his iifetime, the proviso being that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognised by Mahomedan Law as a religious, pious or charitable purpose of a permanent character: *vide* Mr. Mulla's Principles of Mahomedan Law, 10th Edition, page 146. According to Shia Law it is lawful for a Wakif to make himself a Mutwalli, to provide for the support of his family and descendants and to take the allowance fixed for the Mutwallis generally, when he holds the office: *vide* Mr. Ameer Ali's Mahomedan Law, 4th Edition, Vol. I, 521. It is observed by Privy Council in the case of Abadi Begum and others *versus* Kaniz Zainub and others

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reported in 31 C. W. N. 365, 371, on the decision in which both parties' Counsels and pleaders rely that 'the rule that the settler when Mutwalli can take the salary fixed for Mutwallis generally is really no exception, for in that case he takes in his capacity as Mutwalli and not in his capacity as settlor, just as it is laid down in Baillie, Pt. 11 p. 218: "But if one should make an appropriation for the poor and should himself become poor, or for lawyers and himself should become a lawyer, there is no objection to his participating in its benefits—that is to say, as a poor man or a lawyer not as a settler. There is, in fact, in all these cases no reservation at all." It is therefore lawful for a Wakif to eat himself out of the property as a Mutwalli and to take the allowance fixed for the Mutwallis generally. The question is whether Prince Kamar Kader has departed from this important rule of Mahomedan Law. To decide this question it is necessary to examine the clauses embodied in the Wakfnama Ext. R executed by him. The objects stated therein are admittedly good objects *viz.*, provision for the maintenance of his children and descendants and for carrying out certain charitable acts such as Imambara, mosque, etc., and the directions of his religion. It is provided in paras 3, 6 and 7 of the Wakfnama that after meeting Government revenue, public demands, legal expenses, collection charges and cost of repairs (1) $\frac{5}{10}$th share of the balance of the income of the Wakf estate is allowed as remunerations of the Mutwalli chosen among the Wakif or settler and his descendants in his family, (2) $\frac{2}{10}$th share will be divided among settlor's legal heirs according to Shia or Imamya law, (3) $\frac{2}{10}$th share is to be spent for the expenses of the mosque, Imambara and Mahomedan Chalum (40th day) and (4) $\frac{1}{10}$th share is to go to the reserve fund for the increase and improvement of the Wakf estate, (5) $\frac{2}{10}$th share instead of $\frac{5}{10}$th share is allowed as remuneration of the Mutwalli chosen from Kamar Kader's father's descendants or outsiders if Towliat or Mutwallishiip is not confined to his family and in that case (6) $\frac{3}{10}$th share will be divided among his issues and (7) $\frac{3}{10}$th share will be spent for mosque, Imambara, etc., and (8) $\frac{2}{10}$th share will be reserved for the increase and improvement of the Wakf estate and (9) in case of extinction of settlor's children or issues half of their share will be spent on proper acts of charity and the other half shall be set apart for the increase and improvement of the Wakf estate : *vide* the translation Ext. R1. It is contended by the learned counsels of plaintiffs Nos. 1 and 1a in Suit No. 2 and defendant No. 2a in suit No. 1 as well as pleaders of the assignee plaintiff No. 2 of Suit No. 2 and Khatija Bibi plaintiff of Suit No. 1 that as the Wakif Prince Kamar Kader has reserved unreasonable allowance for himself in excess of what is allotted to Mutwallis selected from his father's descendants and outsiders the Wakfnama Ext. R is void according to Shia law. The allowance fixed as remuneration for a Mutwalli by the settler or Wakif may be more than $\frac{1}{10}$th of the income of the Wakf property subject to the condition that the objects of the trust may not fail, as the Wakif is quite competent under Shia law to fix any amount: *vide* Mr. Ameer Ali's Mahomedan Law Vol. I, 4th edition page 469. It is not alleged or proved that the objects of the Wakf will fail because of the Mutwalli's allowance fixed by Kamar Kader at $\frac{5}{10}$th share of the

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suits Nos. 1 & 2 of 1934.

No. 95. Judgment, dated the 13th June, 1935.

income of the Wakf property after meeting certain charges, so long as the Mutwalliship will be confined to himself or members of his family as he is competent to do so. There was much discussion among the counsels of rival parties over the word 'generally' used in the sentence 'the Wakif can lawfully take the allowance fixed for Mutwallis generally' in Mr. Ameer Ali's Mahomedan Law above referred to at page 521, and also at page 366 of Privy Council case reported in 31 C. W. N. 365. The words 'Matwallis generally' mean and include persons of the same denomination or qualification acting as Mutwallis as the settler contemplates along with the settler himself. In common parlance it may be said that 'generality' excludes totality but it contemplates plurality. There is no provision in law that the settler cannot appoint a particular class of person or persons of particular qualification as Mutwallis and if looking at the standard of their lives he fixes a handsome remuneration for them he cannot be said to have transgressed the Shia Law. A paid Mutwalli takes a great responsibility on himself: *vide* Ameer Ali's Mahomedan Law Vol. I (4th edition, page 463—"Any loss sustained by the Wakf through the wilful neglect of the Mutwalli shall be made good by him. It is doubtful, however, whether a gratuitous Mutwalli would be liable for any loss which is occasioned, merely through neglect, to the Wakf. Mr. Godfroi in his book on Trust (V edition) at page 228 observes as follows:— 'A paid trustee is not however in the same position as a gratuitous one and the former is not, it seems, entitled to the same relief under the Judicial Trustee Act'. Thus in view of (1) the heavy responsibility which the office of a Mutwalli shall entail in case of slight neglect, (2) better care to be taken by a Mutwalli chosen from the settler and his family for the Wakf properties, (3) their superior knowledge of such properties the members of the royal family would not be acting improperly in demanding higher remuneration for discharging their duties as Mutwalli with greater efficiency and more scrupulous vigilance than others under Mahomedan Law. The author of the trust is the primary person to give directions about the remuneration: *vide* Agnew on Trusts, 2nd edition page 253. The construction of a document which is in favour of charitable bequest should be adopted in preference to the other construction: *vide* Agnew's book aforesaid, page 361. The possibility of a Mutwalli being appointed outside the family of the Wakif is remote and in fact may not occur within thousand years to come. Such a mere contingency cannot be the standard of fixing the Mutwalli's allowance generally. Prince Kamar Kader in making provisions for the Mutwalliship does not show any preference to himself as a settler. It is held in A. I. R. 1932 All. 596 that a Wakif in making the distinction between himself as Mutwalli and the succeeding Mutwallis can under certain circumstances take more salary for himself than for his successors and that a Wakf containing such provision is not invalid. In the case reported in 10 Cal I. L. R. 533 one-third of gross income is held to be good remuneration for a Mutwalli. It may be more than half share of the net income. So in my opinion the provision in the Wakfnama Ext. R for the remuneration of the Mutwalli chosen from among the settler and members of his family being fixed at half share of the net income of the Wakf Estate is not illegal. The Wakfnama

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is further attacked on the ground that there is no certainty of ultimate dedication on the poor and other charitable and religious purposes on the extinction of individuals as beneficiaries. This is necessary under Wakf Validating Act. The words *'kar-i-khairi-maqul'* used in para. 7 of the Wakfnama Ext. R mean proper acts of charity as in the translation Ext. R1. They mean acts of similar kind referred to in the deed. It is not necessary that the objects of a Wakf should be named. The decisions in cases reported in 1 Bom. H. C. O. C 71 and 1952 A. O. 71, 135 I. C. 372 may be referred to. The guiding principle in dealing with Shia dedications is in the following which is to be found in the text 'Ghunia' and is quoted at page 752 of Ameer Ali's Mahomedan Law, Vol. I (4th edition). 'The directions laid down by the Wakif for the application of the usufruct must be carried out'. This is a translation of the Arabic passage *'All mukufoo ala hasab-i-man ekoofoha ahloha'*. Considered in this light the reasonableness or otherwise of the objects and the amount fixed for them or of the qualifications of Mutwallis and remuneration allowed for them are matters entirely for the Wakif or settler to judge, where a clear charitable intention is expressed in the instrument of Wakf, it will not be permitted to fail because the objects, if specified happen to fail, but the income will be applied for the benefit of the poor or to objects as near as possible to the objects which failed: *vide* 10 C. W. N. 449, 484-485, 36 Bom. 111 and 12 I. C. 702. This well known doctrine of cy-pres is also the rule of Shia Law: *vide* Baillie, II, 216 and Mr. Mulla's Principles of Mahomedan Law, 10th edition, page 135, Section 146H. The next ground of attack is that the Wakfnama Ext. R has not been acted upon and that there has not been any change of possession indicating complete divestment of the settler's ownership. There is a clear declaration of trust created by Prince Kamar Kader in the Wakfnama. After execution of the deed Ext. R the Prince wrote to the Collector of 24-Parganas two letters Ext. J5 dated 19th September 1917 and Ext. J4 dated 9th June 1918 informing him of the execution of the Wakfnama and asking him to keep it in his custody. He also sent a copy of the Wakfnama to Mr. Unsuddowla D. W. 22 after its execution as admitted by latter. That the Wakfnama was made known to the public is admitted also by late Prince Mirza M. Babar aged 85 years a son of the ex-king of Oudh in his deposition Ext. A2 in T. S. No. 120/30, and Brajogopal Goswami D. W. 28. It is thus evident that Prince Kamar Kader wanted and created a Wakf and circulated it among the public. The next thing done by him was that he converted premises No. 123 Circular Garden Reach Road into a mosque and an Imambara as he admits in para. 2 of Wakfnama Ext. R. He got his name mutated as Mutwalli in respect of most of the Wakf properties except three properties at Lucknow (*vide* Exts II to V) and one or two with respect to which litigation is pending as stated by P. W. 23 Makram Ali both in the present Suit No. 2 and T. S. No. 120/30 of 4th Sub-Judge's Court—Ext. O series which are certified copies of registers of Calcutta Corporation show change of possession in proprietary right to that as a Mutwalli. After 18 years it is not possible te get the original petitions of Prince Kamar Kader for mutation from the office of the Calcutta Corporation as such petitions are not kept for more than 3 years.

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D. W. 6 the Municipal Officer brought Corporation assessment books from 1914-15 to 1918-19. Prince Kamar Kader died in January 1919. It cannot be suggested that petitions for mutation must have been made after his death. That will be against the weight of evidence on record—considering (1) that the Prince informed the Collector about the execution of the Wakfnama as shewn by his letters Exts. J4 and J5, (2) that he admitted having created the Wakf in his deposition Ext. A3 in 1918 in Maurice's suit, (3) that he spoke to Babu Brojo Gopal Goswami D. W. 28 a senior pleader of Kidderpore and (4) that printed copies of Wakfnama were distributed after execution of Wakfnama as evidenced by the deposition of defendant's witnesses Nos. 22 and 10 it would be consistent for the Prince to inform the Calcutta Corporation and not to conceal it. The presumption of law is that he did it himself *vide* 5 Rangoon, page 7 at pages 14 and 15 (P. C.). It cannot be expected that defendants Nos. 3 and 4 should be able to obtain direct evidence after so many years to show that mutation in Corporation register was effected at the instance of Prince Kamar Kader. Even belated entry about mutation will suffice: *vide* A. I. R. 1930 Allahabad 169, 172 and 49 Cal. 1. L. R. 477, 488. Except two holdings of Daripin in 122 Circular Garden Reach Road there is no revenue-paying property covered by Wakfnama Ext. R. But no mutation is made by Kamar Kader in respect of such Daripin lands. However, the possession of part is sufficient to prove transmutation of possession of the whole: *vide* 37 C. L. J, page 1 at page 14. Kamar Kader as Mutwalli executed a Patta Ext 5 dated 18th June 1918 in favour of Nafar Chandra Roy father of Sudhansu Roy D. W. 12, who executed a registered Kabuliat Ext. K1 in his favour in respect of premises No. 28 Ramkamal Street for a lease for 3 years. Saheba Khatun was a party to these deeds as her lease was then subsisting. In case of settler himself being the Mutwalli delivery of possession is out of question. It is only the declaration in unequivocal terms that he holds no longer as owner but as trustee that would fulfil the requirements of law: *vide* 49 Cal. 477 at page 488 and also the decision in Abadi Begum's case reported in 31 C. W. N. 365 or 6 Pat. 259 or 54 I. A. 33. Apart from the question of mutation of names delivery of possession may be evidenced by the fact that the subject of the Wakf, just as in the case of gifts, is put to the use of the objects of the Wakf—delivery of possession is proved by acts of ownership exercised on the subject by the donee: *vide* Tayabji's Mahomedan Law, page 432. It is proved by unrebutted evidence in these suits that the objects of the trust were carried out and payments were paid to beneficiaries. It is not proved that the Wakf was not given effect to. Acting upon the Wakf is not a necessary condition for the validity of a Shia Wakf. A breach of trust on the part of the Mutwalli cannot alter the essential nature of the trust or convert the endowed property into the personal property of the Manager—*vide* Ameer Ali's Mahomedan Law, Vol. I (4th edition) page 476. An authoritative Shia book Shasrul Islam lays down as follows:—Subsequent conduct of the Wakif after mutation of names cannot be looked into in order to find out whether there was intention on his part to divest himself of the proprietary interest or whether the Wakf had been completed or not: *vide* 10 C. W. N. 449, 2 Patna Law Times,

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page 658 and 6 W. R. 116. There is overwhelming oral evidence as regards the use to which the mosque and Imambara were put according to the provisions of the Wakfnama. It is observed in Shia Book Shaacrul-Islam that 'if the Mutwalli is himself the Wakif and the subject of the Wakf is in his hands' (as in this case subject to a lease in favour of Saheba Khatun) the Wakf becomes operative simply on the happening of the contract of Wakf'. It is held in the case of Mitter *V.* Madho Das reported in 19 All. page 84 (P. C.) that declaration about the trust is necessary and being an admission in derogation of his personal rights, the admission is conclusive in the matter'. Here was a full declaration of trust in writing made by Prince Kamar Kader in the Wakfnama Ext. R. and also on subsequent occasions as shewn by his letters Exts. J4 and J5 'and by Exts. S1, A3 and others. There is no force in further argument of the learned counsels of plaintiffs Nos. 1 and 1a that the Wakf is invalid as the subject of the Wakf was not in the possession of the Wakif Prince Kamar Kader on account of the lease of Saheba Khatun. There can be a valid Wakf in respect of lease-hold property: *vide* Ameer Ali's Mahomedan Law page 203 (4th edition) and Mr. Mulla's Principles of Mahomedan Law (10th edition), page 132. From 1924 even before expiry of Saheba Khatun's lease up to 1931 Cheque-muries and Dhakilas from some tenants and account-books are filed to show realisation of rents in respect of Wakf properties by Syedali as Mutwalli. If no rents were realised by the Wakif as first Mutwalli from Saheba Khatun the lessee till the expiry of her lease it was clearly a breach of trust on his part for which the Wakf will not fail. Subsequent conduct of Prince Kamar Kader in respect of the disputed property during his life-time as shewn by Exts. J4, J5, A3, Ext. O series and the evidence of defendant's witnesses Nos. 10, 22 and 28 indicates that he treated the property as Wakf porperty. It may be noted that in similar Title Suit No. 120/30 instituted by Khatija Bibi against M. Elias in local 4th Sub-Judge's Court it is held that the Wakfnama Ext. R is a valid deed executed by Prince Kamar Kader: *vide* the certified copy of the judgment Ext. B5. The decision in that suit is legally binding on the parties to it until it is reversed or modified in appeal. From the evidence on record and the facts and circumstances of the case I find that the Wakfnama Ext. R is a legally valid and *bona fide* document executed by late Prince Kamar Kader out of his free will with full knowledge of its contents when he was possessed of full power of understanding and capable of managing his own business and that it was neither intended to defraud his creditors nor it was tainted with fraud or undue influence.

Issues Nos. 20 *and* 25:—Plaintiff No. 2 Mahmuda Bibi daughter of Hashem Ibrahim Shaliji claims the disputed $\frac{1}{3}$rd share of Juhi Begum in the properties left by her father late Prince Kamar Kader as his heir by virtue of a deed of assignment Ext. 7 alleged to have been executed by her in her favour on 17th February 1931 within 18 days from the institution of her Title Suit No. 2. It is contended by pleaders and counsels of plaintiffs Nos. 1 and 1a and defendants Nos. 3 and 4 of that suit that the deed of assignment Ext. 7 is void for want of consideration. There was no cash consideration for the

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deed. It was executed for Rs. 15,788 including Rs. 15,000 due on two handnotes Exts. 13 and 13(*sic*) for Rs. 12,000 and Rs. 3,000 dated 3rd March 1919 and 19th June 1919 one of which was executed by Juhi Begum and her 2nd husband Hashem Ali Khan but both of which appear to be time-barred. The dates in the endorsements on the back of these handnotes show that the years are tampered with. Other endorsements on their back and the alleged payments noted in them are not proved. P. W. 8 Mongal Das Gobardhan Das is examined to prove that these endorsements were made by Hashem Ibrahim Shaliji but he does not say when the dates were changed. Hashem Ibrahim Shaliji was adjudged an insolvent in December 1921. In 1921 these handnotes which were not time-barred then were not entered by him in private schedule Ext. G of properties filed in insolvency case. Hashem Ibrahim Shaliji endorsed the handnotes in favour of his daughter Mahmuda Bibi plaintiff No. 2 but he does not come forward to depose. Mahmuda Bibi also is not examined to prove any payments. But let us consider the circumstances which led to the execution of the deed of assignment Ext. 7 dated 17th February 1931 by Juhi Begum She had already given up her claim for dower against the heirs of her first husband as she admitted in her deposition Ext. I in High Court Suit No. 1515 of 1918. Her 2nd second(*sic*) Hashem Ali Khan who habitually indulged in races was a pauper. He admits that he was in debts and that he was removed from house to house as he could not pay house rents of Rs. 15 or so. He was not pulling on well with her then as shewn by his letter Ext. J and the evidence of the Manager Jafar Shiraji D. W. 24. Her brother Syed Ali put up an adverse claim to the estate of her father on the basis of Wakfnama Ext. R. So she was not on good terms with him. There were her debts on two pronotes purported to be alive. There was also a High Court decree obtained by official assignee against her but subsequently purchased by Khatija Bibi wife of her creditor Hashem Ibrahim Shaliji. Her father Prince Kamar Kader created a Wakf of his properties by a deed Ext. R dated 14th June 1917 and valued them at 2 lakhs of rupees. She was not in possession of his properties on his death. They were possessed by her brother Syed Ali. In view of the Wakfnama Ext R executed by her father being held by Court to be legally valid she would inherit no share in her father's properties as his heir. In these circumstances it does not appear to be unnatural and improbable that she executed the deed of assignment Ext. 7 in favour of her creditor's daughter Mahmuda Bibi and assigned her alleged $\frac{1}{3}$rd share in her father's properties to her for Rs. 15,788 in consideration of (a) her apparently barred debts on the aforesaid handnotes Exts. 13 and 13A, and (b) payment of a monthly grant of Rs 100 from the income of her properties, subject to the charge of Khatija Bibi's decree in execution of which her property was attached but subsequently released subject to the result of Suit No. 1. Her creditor Hashem Ibrahim Shaliji, his wife Khatija Bibi and his daughter Mahmuda Bibi considering the advantages derivable under the arrangement and thinking it a bargain acceptable to them agreed to it. An assignment cannot be questioned as unfair and unconscionable by a person who was not a party to it: *vide* 12 C. W. N. 393

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406 (P C)—under Section 25 of the Indian Contract Act a contract to pay a time-barred debt is not void but is legally enforceable. A third party cannot challenge the passing of consideration or the *bona fides* of a sale transaction: *vide* 9 C. W. N. 477, 485 (P. C.). Under Section 55 of Transfer of Property Act no deed is void for non-payment of consideration. If there was intention to sell, the document will stand and the unpaid purchase-money will be a charge on property sold. It is proved that Juhi Begum executed the deed of assignment Ext. 7 by putting her thumb impressions on it. No finger impression expert is examined to disprove it. Her denial of execution of the deed of assignment in her statement Ext. M before the enquiring officer about commutation of her Wasika pension, during her serious illness when she was anxious to be reconciled to her brother Syed Ali must be accepted with caution. Plaintiff No. 2 is not bound by her denial after execution of the deed. Her constituted attorney Ujir Ali P. W. 2 admits at pages 34, 68 and 69 of his deposition payment of monthly allowance of Rs 100 by Golam Hossain Oraji husband of Mahmuda Bibi to Juhi Begum for February 1931 in that month and March allowance was paid in March 1931 by insured post to her at Sandila where she was residing then as shewn by Ext. 21. The deed of assignment Ext. 7 was thus acted on by Juhi Begum. Her solicitor Mr. G. C. De, acted for her and wrote a letter of demand of Hamidi Bibi. There is no reliable evidence on the side of plaintiffs Nos. 1 and 1a and defendants Nos. 3 and 4 in Suit No. 2 to show that there was any undue influence or coercion in regard to the execution of the deed of assignment Ext. 7 or that it was executed by Juhi Begum without full knowledge of its contents. From the facts and circumstances of the case I find that the deed of assignment Ext. 7 was duly executed by Juhi Begum in favour of Mahmuda Bibi for good consideration after institution of her Suit No. 2 but in view of a disposition of property by a valid Wakfnama Ext. R executed by Prince Kamar Kader his daughter Juhi Begum acquired no interest in it as his heir on his death. That being so plaintiff No. 2 Mahmuda Bibi got no interest in the disputed Wakf property on the basis of the deed of assignment Ext. 7. So she is not entitled to be substituted as sole plaintiff in place of the original plaintiff Juhi Begum in Suit No. 2.

Issues Nos. 22 *and* 23 *and* 19:—Mirza Syedali son of Prince Kamar Kader and father of defendants Nos. 2 to 4 did not claim any share in his father's properties as his heir. As his father made a Wakf of his properties by a valid Wakfnama Ext R dated 14th June, 1917 and as on his death his son Syedali possessed those properties as second Mutwalli according to the terms of the Wakfnama Ext. R no question of his title by adverse possession arises. Juhi Begum did not inherit any share in the properties of her father as his heir in view of the latter having made a Wakf of such properties by a valid deed So the assignee Mahmuda Bibi has acquired no interest in such properties by the deed of assignment Ext. 7. Mirza Syedali had no personal interest in those properties. He was in possession of the Wakf properties as a sole Mutwalli on the death of his father.

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Issue No. 21 :—As Juhi Begum inherited no share in the disputed properties as heir of her father late Prince Kamar Kader neither her 2nd husband Hashem Ali Khan as her heir on her death nor his assignee plaintiff No. 1a Ashiq Hosain has acquired any interest in those properties, in view of the valid Wakfnama Ext. R executed by Prince Kamar Kader and is not entitled to remain in the category of plaintiff and is entitled to any relief prayed for by original plaintiff Juhi Begum

Issues Nos. 10, 11, 13 :—The properties in suit are admittedly covered by the Wakfnama Ext. R dated 14th June, 1917 executed by Prince Kamar Kader. As the latter divested himself of whatever rights he had in such properties by a valid Wakfnama Ext. R Juhi Begum did not inherit her alleged share in them as his heir. So the property sought to be attached and sold by Khatija Bibi plaintiff in Suit No. 1 in execution of the decree against Juhi Begum purchased by her is not liable to attachment and sale according to law. This is also the view taken by the Court in T. S. No. 120 of 1930 brought by Khatija Bibi against M. Elias and others: *vide* the certified copy of judgment Ext. B5. The summary decision dated 15th February, 1930 in the claim Cases Nos 10 and 11 of 1929 is therefore not liable to be set aside.

Issues Nos. 14 *and* 15 :—These two issues may conveniently be considered together. The Suit No. 1 instituted by Khatija Bibi wife of Hashem Ibrahim Shaliji is based on purchase of a High Court decree dated 23rd August, 1923 obtained by the official assignee against Juhi Begum daughter of late Prince Kamar Kader a son of the Ex-King of Oudh on the basis of failure of consideration for the deed of assignment Ext. 12A dated 28th September, 1918 executed by her in favour of Hashem Ibrahim Shaliji for one lakh of rupees in respect of her dower claim of 12 lakhs of rupees against the estate of her first husband late Humayun Kader. Hashem Ali Khan the second husband of Juhi Begum admits at page 38 of his deposition that her dower was fixed also at 12 lakhs of rupees at the time of her second marriage with him and that it was a customary dower with Oudh family, which was never meant to be paid or received and which he had no means to pay. No Kabinnama is forthcoming about the alleged dowers of either Juhi Begum fixed on the occasions of her two marriages or of her mother Amir Begum. Under Section 5 of Oudh Laws Act XVIII of 1876 Court will have to grant reasonable amount of dower with reference to the means of the husband and status of the wife when the amount of dower stipulated in a contract is excessive. It is not disputed by either party that Juhi Begum appointed Muhammad Toki, Hamid Ali Khan and Nawabjan as her constituted attorneys. She was identified by her brother Mirza Syedali at the time of registration of the power of attorney executed by her in favour of Muhammad Toki. From Ext. 20 dated 18th May, 1918 it appears that it was arranged between her constituted attorneys aforesaid *viz.* Muhammad Toki, Hamid Ali Khan and Nawabjan on the one hand and Hashem Ibrahim Shaliji on the other hand after 18th May, 1918 that her dower debt would be purchased by the latter for a lakh of rupees. Subsequently the deed of

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assignment Ext. 12A was executed by her in his favour on 28th September, 1918. It is alleged by defendants Nos. 3 and 4 and 2a that no consideration passed for that deed and that no summons in Suit No. 1515 of 1918 of High Court brought subsequently by Hashem Ibrahim Shaliji on the basis of that deed against Juhi Begum and others was served on Juhi Begum and that the deed of assignment Ext. 12A and the *ex parte* decree passed by the High Court in that suit are fraudulent and void. There is no reliable evidence on the record in support of such allegations. The endorsement on the back of the draft of agreement Ext. 18 shows that it was approved by Satis Chandra Ghose as pleader for Juhi Begum and explained and read over by him to her on 19th September, 1918 and that the consideration for the deed consisted of Rs 20,000 as earnest money and Rs 80,000 *i. e.* one lakh of rupees. Satis Chandra Ghose admits the endorsement to be in his handwriting: *vide* order No. 179 dated 8th April, 1935. He admits also that he acted as a pleader for Juhi Begum, saw the lady sign the deed of assignment Ext. 12A by stretching out her hand outside the Purda and putting her thumb-impressions on it, signed the deed himself as an attesting witness and that the deed was a real and not a bogus one. In that deed Juhi Begum admits receipt of one lakh of rupees from the assignee Hashem Ibrahim Shaliji as consideration for the deed. Defendants have not satisfactorily discharged the onus that lay upon them to show that the recitals in the deed Ext. 12A are not correct: *vide* 12 W. R. 25, 26. A statement in a document should *prima facie* be accepted as true as against the executant unless it can be shewn by independent evidence to be false: *vide* 22 C. W. N. 530 (P. C.). But there is no independent evidence on the side of the defendants in Suit No. 1 to show the incorrectness of the recitals in the deed of assignment Ext 12A. In view of a deed of release alleged by Juhi Begum to have been previously executed by her in favour of the heirs of her first husband late Humayun Kader, Hashem Ibrahim Shaliji before taking the deed of assignment from her on payment of a lakh of rupees made reasonable enquiries as an intending purchaser of ordinary prudence should have done, and sent requisition Ext. 19 through his solicitors for title to Satis Chandra Ghose as pleader for Juhi Begum. All the questions and answers in that requisition were explained by her pleader to her. Ext. 19 shows that Juhi Begum through her pleader Satis Chandra Ghose definitely stated that the alleged deed of release in favour of the heirs of her first husband was a deed of family settlement without consideration and inoperative in law and that she did not give up her claim for her dower: *vide* her answer to question No. 1 in Ext. 19. The questions and answers embodied in the requisition Ext. 19 were explained to Juhi Begum by her pleader Satis Chandra Ghose as shewn by the endorsement therein. In the draft agreement Ext. 18 the address of Juhi Begum is mentioned as 13 European Asylum Lane within Calcutta. Satis Babu says that he was taken by Hashem Ibrahim Shaliji to that place and was told by him that Juhi Begum was there. Nawab Hashemali Khan defendant No. 2A in Suit No. 1 did not file any written statement but he filed a petition on 26th March 1935 after entering his appearance on 21st March 1935 through a counsel. By that petition he adopts the written statement filed by Mirza

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Syedali defendant No. 1 brother of Juhi Begum. As a childless widow Juhi Begum was entitled to no share in the lands of her first husband Humayun Kader according to Shia law: *vide* Mr. Mulla's book on Principles of Mahomedan Law, (?) edition page 97. It is therefore quite natural and probable that she intended to assign her dower claim to Hashem Ibrahim Shaliji for a lakh of rupees only as she has done by the deed of assignment Ext. 12A. That deed was explained to her by late Golam Tahoor a High Court interpreter in the presence of her 2nd husband Hashemali Khan as shown by the endorsement borne by it. It is not alleged or proved by defendants that Golam Tahoor was related to Hashem Ibrahim Saliji or that he did not act as an interpreter as shewn by the endorsement or that he was in conspiracy with the assignee and the attesting witnesses mentioned in the deed of assignment Ext. 12A or that the signature borne by the deed is not his signature. In her deposition on commission in High Court Suit No 1515/18 Juhi Begum admits her thumb marks on the deed of assignment Ext. 12A at premises No. 13 European Asylum Lane and receipt of Rs. 7,000 only in respect of that deed as a loan from Hashem Ibrahim Saliji, although she denied having executed any such document and admitted having relinquished her dower claim by a deed. Her pleader Satis Chandra Ghose admits in his cross-examination that he wrote her name and that she put her thumb-impression before the Sub-Registrar at the time of registration of the deed on commission. Juhi Begum also denied a previous deed of agreement dated 7th September 1918 alleged to have been executed by her in favour of Hashem Ibrahim Shaliji, which is not filed in this suit, although she admitted her thumb marks in it: *vide* Ext. 1. In the case of a completed contract no anti-agreement is to be looked to: *vide* 33 C. W. N. 293 (P. C). Hashem Ibrahim Saliji and his brothers were partners of a firm named Soleman Ibrahim Shaliji & Co. That firm was adjudicated insolvent on 8th December 1921. Properties of individual partners were also seized as they were also declared insolvent individually and as members of the firm. All their rights to sue and to be sued were vested in the official assignee. The latter was substituted as a plaintiff in place of Hashem Ibrahim Shaliji in the High Court Suit No. 1515/18. Cash books of the aforesaid firm containing Ext. 23 series are called for by defendant No. 2A from the official assignee. Ext. Vj dated 3rd March 1919 which is an entry in that cash book shows that Juhi Begum used to take loans from Hashem Ibrahim Shaliji from time to time. This is also shewn by the handnotes Ext. 13b and——. One of these handnotes Ext. 13b dated 3rd March 1919 was executed jointly by her and her husband Hashemali Khan. The latter does not deny its execution. A legal presumption arises under Section 118 of Negotiable Instrument Act that the handnote was for consideration. Hashemali Khan's plea of absolute want of consideration for the deed of assignment Ext. 12A is disproved by his wife Juhi Begum who admits receipt of Rs. 7,000 from the assignee Hashem Ibrahim Shaliji although as a loan. It is also disproved by the entries Exts 23 and 23C in the aforesaid cash book, Ext. 23 dated 27th September 1918 shows payment of Rs. 80,000 by the aforesaid firm to the partner Hashem Ibrahim Shaliji on account of his purchase of Juhi Begum's dower for one lakh of rupees for

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payment to her through him Ext. 23C dated 5th September 1918 shows Rs. 20,000 debited against him on account of payment of earnest-money through his solicitors Messrs. Das and Basu for Bainanama dated 7th September 1918 previous to the deed of assignment Ext. 12A, in 20 G. C Notes of Rs. 1,000 each. Ext. 23d in the aforesaid cash book dated 28th September 1918 shows Rs. 35,000 credited to Hashem Ibrahim Shaliji for payment (of loans) made by him on different dates to Juhi Begum on receipts granted by her, which has been received back from her through him. Reference may be made to the subsequent handnotes writing Exts. 13A and 13B and the receipt Ext. 10A and also to Juhi Begum's admissions. The sum in Ext. 23d consists of Rs. 10,000 in one G. C. Note No. $\frac{OB}{25}$ 39021 and Rs 25,000 in 25 G. C. Notes of Rs. 1,000 each. P. W. 10 Kasem Shaliji brother of Hashem Ibrahim Shaliji at page 55 of his deposition says that the sum of Rs. 35,000 was received from Juhi Begum on account of her previous loans. The receipts referred to in Ext. 23d are not forthcoming. The entry Ext. V dated 30th September 1918 in the cash book shows payment of Rs. 19,800 including the G. C. Note of Rs. 10,000 bearing number $\frac{OB}{25}$ 39021 by the firm to Kharda Co. on account of purchase of gunny bags by the firm after 2 days from the date of assignment Ext. 12A. Much stress is laid by defendant's counsel that Hashem Ibrahim Shaliji and M. Toki have not been examined by Khatija Bibi but former's brother. Kasem Shaliji P. W. 10 who admittedly used to check Kancha accounts of the firm as a partner and to whose evidence no exception is taken by defendant No. 2A admits at pages 50 and 51 of his deposition that the aforesaid cash book filed by the official assignee a public officer at the request of defendant No. 2a was cash book of the firm deposited in his office and that the cash books, ledger and Nandh book of the firm were kept by the firm in regular course of its business. Golap Bhai the writer of the aforesaid entries in the cash book proved on behalf of Khatija Bibi plaintiff in Suit No. 1 is dead. Ext. V6 shows payment of Rs. 350 by Hashem Ibrahim Shaliji to M. Toki for receiver matter and not as a bribe as alleged by the contesting defendants. M. Toki has been painted by latter's counsels as a knave during their argument but there is no reliable evidence in support of that contention. There is nothing in the entries in the cash book to question their genuineness. The fact that M. Toki was retained by Juhi Begum as her constituted attorney till her death and that the power of attorney executed by her in his favour was not cancelled by her disproves such allegation. M. Toki was the manager of the affairs of Amir Begum mother of Juhi Begum who lived with her occasionally. Both Amir Begum and her daughter had full confidence in him. He negotiated Juhi Begum's marriage with Hashimali Khan. The latter alleges to have paid him Rs. 3000 in that connection although no receipt is filed by him to show the alleged payment. In her deposition on commission in High Court Suit No. 1515/18 Juhi Begum does not deny that her constituted attorney

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M. Toki engaged Messrs. Jones & Co. as her solicitors in that suit on her behalf as he was authorised by the general power of attorney Ext. 20 executed by her on 19th May 1918 to prosecute and defend suits on her behalf. There is nothing to show that Muhamad Toki did acts for Juhi Begum in excess of the authority given by the power of attorney. Messrs. Jones & Co. prepared her written statement for her defence in the High Court suit which was produced before the Commissioner during her examination on commission. In view of (1) Juhi Begum's admission of the execution of a deed of release in favour of the heirs of her first husband in respect of her dower claim inspite of her clear answer to the contrary given in the previous requisition Ext. 19 and (2) her denial of the execution of the deed of assignment Ext. 12A the official assignee thinking the claim of Rs. 12 lakhs as uncertain amended the plaint of High Court Suit No. 1515/18 by reducing it to one lakh of rupees and prayed for a decree for that sum against Juhi Begum personally as shewn by the recitals in para 9A of the amended plaint Ext. H. If Juhi Begum's mind did not accompany her signature she was bound to refund one lakh of rupees which she got under the contract according to Section 65 of Contract Act. It may be borne in mind that Juhi Begum admitted her thumb marks on the deed of assignment Ext. 12A and also receipt of Rs. 7000 only on it in her deposition on commission but it is established by reliable oral and documentary evidence that the deed of assignment is genuine and that a consideration of one lakh of rupees passed between the parties to it and that there was no fraud in regard to it. Shahan Israli Ali D. W. 3 at page 11 of his deposition says that Juhi Begum used to observe half Purda. Her husband Hasbemali Khan in his letter Ext. J complained that his wife Juhi Begum appeared before other persons. Evidence on record discloses that Juhi Begum was intelligent, capricious, changeful and entered into business transactions with the intelligence of a business person and that she was not a strictly Pardanashin lady as alleged by the counsels of defendant No. 2A. She is therefore not entitled to the legal protection which the law gives to a strictly Purdanashin lady. The rulings reported in 33 Cal. I. L. R. 773, 783 (P. C.) and 18 C. W. N. 282 (P. C) may be referred to in this connection. Her prevaricating statements made on different occasions to suit her own purposes can hardly be relied on. However, the evidence on record affirmatively and conclusively show that the deed of assignment Ext. 12A was not only executed by Juhi Begum but was explained to her and was really understood by her and that the deed was signed not under duress but from the free and independent will of the lady. It cannot be said that she had no independent advice when she approved the draft of agreement Ext. 18 and subsequently executed the deed of assignment Ext. 12A in the presence of her pleader Satis Chandra Ghose, Solicitor Hiralal Das and her sister's son Hamidali Khan *alias* Loddan Aga and the H. C. interpreter Golam Tahoor. Summons in H. C. Suit No. 1515/18 was served upon Mahamad Toki as constituted attorney of Juhi Begum on 6th January 1919 as shewn by the report of the process-server dated 7th January 1919 and Sheriff's certificate Ext. XIII. There is no provision in C. P. Code for service of notice of amendment of plaint upon Juhi Begum the only defendant in that suit against whom a personal decree

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was sought by the official assignee. Even if it be conceded for the sake of argument that notice was necessary its non-service is an irregularity that does not invalidate the *exparte* decree passed in the suit *vide* 16 C. W. N. 805. Even if it be assumed that Juhi Begum was not aware of the H. C. suit till her examination on commission it was her bounden duty to enquire about the suit when she came to know of it *vide* definition of notice in Section 3 of Tr. P. Act. Hashemali Khan at page 17 of his deposition admits that he and Juhi Begum had no knowledge of the *exparte* decree up to the end of 1923. But they took no steps to set aside the decree dated 21st August 1923. By amendment of plaint sought by the official assignee in the High Court suit there was no material change of the suit into another of a different character. Court may give the appropriate relief to the plaintiff in a suit by allowing an amendment of plaint. Reference may be made to the decision in 9 C. W. N. 577 in this connection. Jurisdiction of Original Side of the High Court in allowing the amendment of plaint in Suit No. 1515 of 1918 is not questioned by either party. An *exparte* decree passed by High Court with jurisdiction is as good as a contested decree unless it is set aside either in review or in appeal or by a separate suit within the time limited by law. A decree tainted with fraud is not void but voidable only and must be avoided within the statutory period of three years prescribed by Article 95 of Indian Limitation Act in an appropriate proceeding: *vide* 30 C. W. N. 59, 61. The decree obtained by official assignee against Juhi Begum was executed in Lucknow Court and sum of Rs. 4,650 was realised by sale of judgment-debtor's Barabanki property on 24th November, 1926 as shewn by Ext. 3. That sale was not set aside. The decree was purchased by Khatija Bibi at an auction-sale on 25th May, 1929 in insolvency case as shewn by Ext. 17. The defendants have failed to substantiate their plea by any convincing and reliable evidence that it was a Benami purchase made by her husband Hashem Ibrahim Shaliji in her name and the decree in question is tainted with fraud. The observations of Chief Justice Jenkins in the case reported in 15 C. W. N. 875 may profitably be referred to in this connection. Issues Nos. 14 and 15 are therefore decided in favour of plaintiff in Suit No. 1.

Issue No. 5:—As I have observed above, the judgment in Title Suit No. 120 of 1930 of which Ext. B5 is a certified copy is binding on the parties to that suit. It may not operate as *res judicata* as that suit cannot be said to have been finally decided in view of the pendency of an appeal preferred by Khatija Bibi against it.

Issue No. 3:—Suit No. 2 is not brought by Juhi Begum to set aside the Wakfnama Ext. R dated 14th June, 1917. It is a suit for partition in respect of her alleged ⅓rd share in the properties of her father as his heir based on possession. So Article 91 of Limitation Act does not apply to it. Article 142 of the Act also does not apply to it as it is not a suit for recovery of possession on plaintiff's previous possession but subsequent dispossession. Article 144 of the Limitation Act seems to be applicable to the suit. Prince Kamar Kader died on 30th January, 1919. Since that date his son Syedali

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possessed the Wakf properties as 2nd Mutwalli according to the terms of the Wakfnama Ext. R adversely to the interest of Juhi Begum and other heirs of Prince Kamar Kader. The Suit No. 2 being instituted on 30th January, 1931 within 12 years from the date when the possession of defendants 2 to 4's father Syedali became adverse to the plaintiff Juhi Begum does not seem to be barred by limitation under Article 144 of the Limitation Act. Suit No. 1 which is instituted under Order 21 Rule 63 of C. P. C.(?) within one year from the date of decision in the Claim Cases Nos. 10 and 11 of 1929 brought by Syedali but allowed on 15th February, 1930 : (*vide* the certified copy Ext. 4 of the judgment) is obviously not time-barred.

Issue No. 4 :—It is admitted by both parties that holding No. 4, Kailasarak Road belongs to M. Elias and is possessed by him and Plots Nos. 55/1, 55/1/1, Diamond Harbour Road and another property at Matiaburz were acquired by Calcutta Improvement Trust long ago but are possessed by other persons and that premises No. 60, Ballygunge Circular Road was sold to M. K. Shirazi but the persons possessing those properties have not been made parties to Suit No. 2 although they seem to be necessary parties. But their non-joinder is not fatal to the suit. This point is not pressed by defendant's pleaders regarding Suit No. 1 during their argument.

Issue No. 2 :—The plaint as it stands in Suit No. 2 after amendment is a simple suit for partition. Before amend(*sic*) there was an alternative claim for declaration of title and recovery of possession. Plaintiffs apparently were aware that they were not in possession of any of the properties in suit and therefore they made the said alternative prayer. It is established by evidence that the Mutwalli is in possession of the entire property covered by the plaint. Such possession not being the possession of a co-sharer is hostile to Juhi Begum claiming under inheritance. The plaintiffs have failed to prove latter's or their possession as co-sharers. The record of Juhi Begum's name in the papers of the local Patwari in respect of some property may be some evidence of her possession but there is no corroborative and convincing evidence to show her actual possession. The tenant D. W. 1 who proves the Kabuliat Ext. K executed by him and his father denies Hashem Ali Khan's possession. The latter cannot attribute his possession of a grove at Lucknow to be the possession of a co-sharer. The fact of Juhi Begum's occasional coming to and going from premises No. 11, Rangalal Street indicates her possession of that house as one of permissive character as the tax bill of that house shows that the Manager of Wakf Estate is its occupier. Partition is not a substitute for ejectment, because partition implies an existing joint possession and enjoyment, to be converted into possession in severality : *vide* 21 C. L. J. 253. The Suit No. 2 for partition is therefore not maintainable by the present plaintiffs in its present form. As there is no defect in the form of Suit No. 1 that suit is maintainable.

Issue No. 1 :—As there is a valid disposition of the properties in suit by Prince Kamar Kader by the Wakfnama Ext. R there is nothing for Juhi

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Begum to inherit any share thereof as his heir. So plaintiffs have no cause of action in both the suits.

Issues Nos. 9, 18, 30 *and* 31: In view of the findings recorded above plaintiffs in Suits Nos. 1 and 2 are entitled to no reliefs claimed against the defendants.

Ordered:---that the Suits Nos. 1 and 2 be dismissed with costs and interest at 6 p. c. p. a. till realisation against the contesting defendants.

Nikunja Behari Banerji,
Offg. 3rd Addl. Sub-Judge.
13-6-35.

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No. 96.

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suit No. 2 of 1934.

No. 96. Decree, dated the 13th June, 1935.

Nos. 80-95—Decree in Title Suit No. 2 of 1934 of the Court of the 3rd Additional Subordinate Judge, 24 Parganas.

Decree in Original Suit.

(Order 20, Rules 6 and 7, Code of Civil Procedure).

District 24-Parganas.

In the 3rd Additional Court of the Sub-Judge at Alipore.

Title Suit No. 2 of 1934.

1. Nawab Syed Mahammad Hashim Ali Khan son of Nawab Zaighamuddowalah Bahadur of Fulkhana No. 14, Deuri Mir Lucknow, 1(a) Syed Ashiq Hossain, 2. Sm. Mahmuda Bibi wife of Golam Hossain of 8-1, Amratola Lane, Calcutta ... *Plaintiffs,*

versus

1(a) Iffat Ara Hamidi Begum widow of late Mirza Md. Syed Ali. 1(b) Jahanara Jafri Begum, 1(c) Keswar Ara Sadeka Begum, daughters of late Mirza Md. Syed Ali, 1(d) Mirza Md. Wahed Ali minor son of late Mirza Md. Syed Ali, represented by his natural guardian and mother Iffat Ara Hamidi Begum, 2(a) Iffat Ara Hamidi Begum widow of late Mirza Md. Syed Ali, alleged Trustee on behalf of her minor son Mirza Md. Wahed Ali Mutwalli of the alleged Wakf estate, 2(b) Jahanara Jafri Begum, 2(c) Keswar Ara Sadeka Begum daughter of late Mirza Md. Syed Ali alleged Trustee of the alleged Wakf alleged to be created by Prince Qamar Qadar dated 14th June 1917, residing at 123, Circular Garden Reach Road, Thana Watgunge, District 24-Parganas ... *Defendants.*

Claim for—

This is a suit for partition* and in the alternative recovery of possession* (penned through) of the plaintiff's share.

Valued at Rs. 2,02,000.

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*Amended (*vide* order No. 231 dated 17th August 1935).

B. P. B.
Sub-Judge.
17-8-35.

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In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suit No. 2 of 1934.

No. 96 Decree, dated the 13th June, 1935.

(Schedule given in separate sheets).

This suit coming with T. S. No. 1 of 1934 on this day for final disposal before Babu Nikunja Behari Banerjee 3rd Additional Sub-Judge, 24-Parganas, in the presence of Babu Amulya Krishna Mitter pleader for the plaintiffs Nos. 1 and 1a and of Babu Jatindra Nath Mitter pleader for the plaintiff No. 2, and of Syed Ibne Imam pleader for the defendants Nos. 1(b), 1(c), 2(b) and 2(c) and of Babu Krishna Mohan Banerjee pleader for the defendants Nos. 1(a), 1(d) and 2(a), it is ordered and decreed that the suit be and the same is hereby dismissed with costs, and that the sum of Rs. 182-4-3p. and Rs. 2119-2-3p. = Rs. 2301-6-6p. be paid by the contesting defendants to the plaintiffs Nos. 1 and 1a and 2 respectively on account of the costs of this suit, with interest thereon at the rate of 6 per cent per annum from this date to date of realisation.

Given under my hand and the seal of this Court, this 13th day of June 1935.

B. P. B.

Sub-Judge,

23-8-35.

(Illegible),

J. N. Mitra.

Costs of suit.

Plaintiffs Nos. 1 and 1(a).		Plaintiff No. 2.		Defendant.	
Rs. a. p.		Rs. a. p.		Rs. a. p.	
.....	1. Stamp for plaint for plaintiffs Nos. 1 and 1(a) ...	207 8 0	1. Stamp for Power ...	3 0 0	
1 0 0	2. Stamp for power ...	1 0 0	2. Stamp for petitions and affidavits ...	89 4 0	
24 4 0	3. Stamp for petitions and affidavits ...	41 8 0	3. Cost of Exhibits including copies made under the Bankers' Books' Evidence Act, 1891	257 9 3	
87 0 0	4. Cost of exhibits including copies made under the Bankers' Books' Evidence Act 1891 ...	100 10 3	4. Pleaders' fees on Rs. 2,02,000 ...	1610 0 0	
.....	5. Pleaders' fees on Rs. 2,02,000 for plaintiffs 1, 1a and 2 ...	1610 0 0	5. Subsistence and travelling allowances of witnesses (including those of party, if allowed by Judge) ...	57 4 0	

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Plaintiffs Nos. 1 and 1(a). Rs. a. p.	Plaintiff No. 2.	Rs. a. p.	Defendant.	Rs. a. p.
69 0 0	6. Subsistence and travelling allowances of witnesses (including those of party, if allowed by Judge) ...	149 0 0	6. Process fees ...	8 0 0
.....	7. Process fees ...	8 0 0	7. Commissioners' fees	36 0 0
.....	8. Commissioners' fee.	...	8. Demi Paper ...	4 10 6
1 0 3	9. Demi paper ...	1 8 0	9. Cost of transmission of records. Postage ...	0 12 0
.....	10. Cost of transmission of records ...	...	10. Other costs allowed under the Code and General Rules and Orders ..	...
.....	11. Other costs allowed under the Code and General Rules and Orders ...	...	11. Adjournment costs not paid in cash (to be deducted or added as the case may be) ...	*16 0 0
.....	12. Adjournment cost not paid in (to be added or deducted as the case may be)	...		*(penned through)
	Total ...	2119 2 3	Total ...	*(2082) 7 9
Total 182 4 3*	*	182 4 3		*(penned through)
		2301 6 6		2066 7 9

In the Court of the 3rd Additional Subordinate Judge, 24-Parganas.

Title Suit No. 2 of 1934.

No. 96.

Decree, dated the 13th June, 1935.

(Schedules and the usual Notice to take back documents, omitted).

B. P. B.

Signature of Presiding officer of the Court.

K Banerjee,
Pl.

A. K, Mitra,
Pl. for plaintiffs 1, 1a.

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No. 97.

Memorandum of Appeal to the Hon'ble High Court.

Mahmuda Bibi, Appellant,
Through
Narendra Nath Mitra,
Advocate.

In the High Court of Judicature at Fort William in Bengal.

(Civil Appellate Jurisdiction).

Appeal from Original Decree No. 25 of 1936.

No. 97. Memorandum of Appeal, presented on the 26th November, 1935.

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

Civil Appellate Jurisdiction.

Memorandum of Appeal from Original Decree No. 25 of 1936.

Mahmuda Bibi (*alias* Mohenuda Bibi) wife of Golam Hossain Oraji, of No. 8/1, Amratola Lane, Calcutta ... *Plaintiff Appellant,*

versus

1. Iffat Arah Hamidi Begum, widow of Mirza Mahamad Syed Ali, deceased.
2. Mirza Mahamad Wahed Ali, minor, son of Mirza Mahamad Syed Ali, deceased represented by his guardian mother Iffat Arah Himidi Begum.
3. Jahanara Jafri Begum
4. Kiswara Sadeqa Begum

Daughters of Mirza Mahamad Syed Ali, deceased,

All of 123 Circular Garden Reach Road, Kidderpore, Thana Watgunge, District 24-Parganas ... ... *Defendants Respondents.*

5. Hawab Hashem Ali Khan, Baburchitola, Lucknow,
6. Mahamad Ishaq Hossain ... *Plaintiffs Respondents.*

Appeal valued at Rs. 2,00,000 but being a suit for partition, Court-fee paid Rs. 15.

The claim for accounts is given up.

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In the High Court of Judicature at Fort William in Bengal.

(Civil Appellate Jurisdiction).

Appeal from Original Decree No. 25 of 1936.

No. 97. Memorandum of Appeal, presented on the 26th November, 1935.

That the appellant abovenamed being aggrieved by the judgment and decree passed by the 3rd Additional Subordinate Judge of 24-Parganas on 23rd August 1935, in Title Suit No. 2 of 1934 (suit for partition) begs to prefer this appeal on the following amongst other

Grounds:

1.—For that the Court below has failed to appreciate the true scope and nature of the suit and as such its decision is bad in law.

2.—For that the Court below has throughout, in dealing with the question of Wakf made a confusion as to the law properly applicable in the present case.

3.—For that the Court below by altogether overlooking the case as made out by the plaintiffs, has totally failed to properly decide the case on its merits.

4.—For that the Court below did not at all apply its mind to the facts and circumstances under which the alleged Wakf was said to have been executed and has thus totally failed to appreciate the true nature and effects of the transaction.

5.—For that the Court below has all along laboured under a misconception of facts and law in coming to a finding which is wholly erroneous and unwarranted by any material evidence on record.

6.—For that the Court below is wrong in upholding the Wakf inasmuch as it has failed to properly consider or apply the law according to which the validity or otherwise of the alleged Wakf is to be tested.

7.—For that the Court below is wholly wrong in saying that the execution of the Wakfnama by Prince Kamar Kader is admitted by the parties ignoring thereby the material facts on record that the plaintiffs all along challenged the intelligent execution thereof.

8.—For that there being no evidence on record worth the name that the alleged Wakfnama was executed by the Prince in sound state of body and mind and with full power of understanding the Court below has erred in not holding that the defendants have failed to prove the 'intelligent execution' thereof.

9.—For that the Court below has materially erred in overlooking the fact that the alleged Wakfnama was executed at a time when

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Prince Kamar Kader was physically and mentally incapable of executing the same.

10.—For that the Court below should have held that the defendants have totally failed to discharge the onus of proving good faith in regard to the transaction, which lay heavily on them.

11.—For that the Court below has evidently arrived at an erroneous finding by overlooking the material evidence on record that since 1915 up till the time of his death, Prince Kamar Kader severed all connections with his wife and children and lived separately under the complete control of his mistress Saheba Khatoon.

12.—For that the Court below has further come to an erroneous finding by ignoring the most relevant evidence that the Prince when living with Saheba Khatoon, remained in an intoxicated condition under the influence of cocaine, opium and wine, and as such, quite incapable of understanding his own affairs.

13.—For that the Court below is wrong in saying that the attesting witnesses and also witnesses Nos. 9, 11, 19, 22 and 28 for the defendants—'disprove the plaintiff's plea that Prince Kamar Kader was physically and mentally unfit on 14th July 1917 at the time of the execution of the Wakfnama inasmuch as those witnesses being strangers to Prince's family and ignorant and having no direct knowledge of his affairs at the time, their statements are contrary to the direct evidence on record.

14.—For that the finding of the Court below that 'there is no evidence to show that the Prince was suffering from any disease which made him so unfit at the time' – is wholly erroneous inasmuch as it is contrary to the direct evidence on record.

15.—For that the Court below has misunderstood the effects of the medical certificates (Ext. 27 series) granted by Colonel Deare and should have held that these certificates amongst other evidence, conclusively prove that the Prince was physically and mentally unfit during the time.

16.—For that the Court below should have held that there is no evidence on record worth the name that the alleged Wakfnama was properly executed by the Prince with full power of understanding at the time.

17.—For that the findings of the Court below regarding the Wakfnama in question are wholly misleading and erroneous, inasmuch

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In the High Court of Judicature at Fort William in Bengal.

(Civil Appellate Jurisdiction).

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as the evidence of the attesting witnesses does not at all show that the alleged Wakfnama was duly executed by the Prince in their presence and that he fully understood the contents thereof at the time.

18.—For that it should have been held that the evidence of the attesting witnesses, (Md. Abed Ali and Safdar Jah) is irrelevant, unreliable and not at all convincing.

19.—For that the evidence of D. W. Nos. 3, 4, 9, 11 and 19 being wholly unreliable and irrelevant the Court below should not have placed undue credence on their testimony.

20.—For that the Court below should not have placed any reliance on the evidence of D. W. Nos. 22 and 28 Unsuddowla and Braja Gopal Goswami (an undischarged insolvent); on the contrary, the it should have been held that the same was hearsay, irrelevant and inadmissible in law.

21.—For that the Court below had approached the case from a wrong point in view by placing undue reliance on the solitary evidence of D. W. 22 (Unsuddowla) that Prince Kamar Kader was a "deeply religious man," which is wholly inconsistent with the mass of other evidence in the case.

22.—For that the Court below should have held that the execution of the alleged Wakfnama, in the absence and without the knowledge of the members of the Prince's family at the time and at a place when and where they could have or had no access whatsoever as evidenced by the facts and circumstances on record leads irresistibly to the conclusion that it was not the *bona fide* act of Prince Kamar Kader.

23.—For that it being evident from the facts and circumstances already on record that Saheba Khatoon had the Prince under her complete control, and acting under the advice of her godfather, Hasan Askari, got the alleged Wakfnama executed, the Court below has materially erred in overlooking the same in considering the validity of the alleged Wakfnama.

24.—For that the evidence of the attesting witness, Safdar Jah being that the Prince signed the deed at only one place in his presence and that of Abed Ali being that the Prince signed only the last page in his presence and that there being no other evidence at all that all the pages of the alleged Wakfnama was properly signed in the presence of any other witnesses, the Court below is wholly wrong in finding that "It is

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proved that Prince Kamar Kader signed most of the pages of the Wakfnama Ext. R, except its Schedule and pages 11-19 to 22."

25.—For that there being no evidence that Mirza Mahammad Syed Ali was present at the time when the alleged Wakfnama was said to have been executed or that he had any direct knowledge thereof, the Court below has erred in putting a wrong construction on Ext. 29, and the inference drawn therefrom is wholly unwarranted.

26.—For that the Court below should not have placed any reliance on Ext. DD, as the same has no evidentiary value.

27.—For that the Court below should have held, on the contrary, that the very facts that opinion was sought of a counsel and the circumstances in which it was sought, all go to show that the alleged Wakfnama was engineered by Saheba Khatoon and her godfather Hasan Askari and came into existence inspite of the Prince's incapacity to understand the effect of the disposition he is alleged to have made by way of Wakf.

28.—For that there being no material evidence on record, the Court below was wrong in saying that "Prince wanted to execute the alleged Wakf and executed the same."

29.—For that the Wakfnama not having been validly executed and attested, the Court below should have held that the same is wholly an inoperative document.

30.—For that the Court below has materially erred in overlooking the fact that Kishori Mohan Bose, Mirza M. Hossain *alias* Achhan Saheb and Gayadin being the attendants of Saheba Khatoon, provisions were made for them in the shape of allowances under the alleged Wakfnama.

31.—For that there being direct and positive evidence on record, the Court below has erred in holding that the alleged Wakfnama was not a cloak to shield the properties of the Prince from the hands of his creditors.

32.—For that there being sufficient and satisfactory evidence on record the Court below should have held that the alleged Wakfnama was created in order to defeat the claims of Amir Begum one of the creditors of the Prince, in respect of her dower debt.

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In the High Court of Judicature at Fort William in Bengal.

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33.—For that the finding of the Court below "that there was no demand by Amir Begum of her dower claim before the execution of the alleged Wakfnama"—is against the evidence on record – Ext. XI.

34.—For that Rs. 12,50,000 being the amount of dower including both prompt and deferred in the Oudh Family, as established by the evidence in the case, the Court below should have held that statement of the Prince in a previous case with regard to the same was no evidence as against the plaintiffs.

35.—For that the compromise decree for Rs. 35,000 between Syed Ali and Haji Alla Baksh (substituted plaintiff in place of Amir Begum on her retirement from the suit) as mortgagee of her dower debt in Title Suit No. 158 of 1920 brought by Amir Begum against the estate of the Prince for recovery of the same and subsequent payment of the said decretal amount to Alla Baksh from the sale proceeds of premises No. 60 Ballygunj Circular Road which formed one of the alleged Wakf properties, leads to the definite conclusion that Amir Begum's dower debt was not paid by the Prince during his life-time but was due and owing by his estate.

36.—For that the finding of the Court below that Amir Begum's dower debt was paid up by the Prince during his lifetime is against the evidence on record and is erroneous.

37.—For that the finding of the Court below that the compromise decree between Syed Ali and Alla Baksh was in respect of her (Amir Begum's) other properties mortgaged to him (Alla Baksh) but not in respect of her dower debt is wholly misleading, erroneous and is directly opposed to the evidence on record.

38.—For that upon the evidence on record the Court below should have held that the alleged Wakfnama was created with intent to defeat or delay the claims of the creditors of the Prince and as such, it is illusory and invalid in law.

39.—For that Prince Babar having no direct knowledge about the Wakf, the Court below should have rejected his evidence given in T. S. 120 of 1930 as irrelevant and otherwise inadmissible in law.

40.—For that the findings of the Court below that "there is no evidence to show that the assets of Prince Kamar Kader were not more than sufficient to discharge all his liabilities at the

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time of the execution of the Wakfnama" are based on mere assumptions and are wholly inconsistent and erroneous in view of the admitted fact that Saheba Khatoon was in possession of the properties as lessee and that the Prince was heavily involved in debts amounting to over several lakhs of rupees.

41.—For that the findings of the Court below that "No such dishonest intention on the part of Kamar Kader to defeat his creditors at the time of execution of the Wakfnama is disclosed by evidence on trial", are evidently wrong and are in direct conflict with the evidence on record.

42.—For that the Court below should, in view of the Administration Suit (Suit No. 972 of 1911, which was disposed of in 1919) brought by the creditors of the Prince against him in the Original Side of this Hon'ble High Court, and in which an order for the arrest of the Prince was issued in August, 1917, have held that the alleged Wakfnama was executed with the dishonest intention of defeating or delaying the claims of his creditors.

43.—For that in view of the Insolvency Proceedings (Insolvency Case No. 10 of 1918) taken against the Prince in which the Prince was adjudged an insolvent, the Court below should further have held that amongst other things, extreme financial stringency of the Prince led to the execution of the alleged Wakfnama to save the properties from the grip of his creditors and in anticipation of such difficulties.

44.—For that there being no evidence that rent was ever paid to the Prince by Saheba Khatoon as lessee or that the Prince ever received any income of Rs 4,000 from the estate, the observation of the Court below that "he had additional income of Rs. 4,000 from the properties acquired by him" is illegal and is contrary to the evidence in the case.

45.—For that the Court below should not have altogether overlooked the most important evidence on record that since the alleged Wakfnama came to their knowledge, both Amir Begum and Juhi Begum all along challenged the validity thereof and repudiated the same, as bogus, inoperative and invalid in law.

46.—For that the findings of the Court below that "Juhi Begum acquiesced in the validity of the deed as she received stipends under it" is misleading and is inconsistent with evidence in the case.

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In the High Court of Judicature at Fort William in Bengal.

(Civil Appellate Jurisdiction).

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47.—For that in view of the entries in the cash book (Ext. N Series) showing payment of interest to Juhi Begum on account of her share of the money, (Rs. 3,000 received from Barabanki) kept in deposit with her brother Syedali, the Court below should have held that similar entries in other cash books under the head 'stipend' mean nothing other than payments in lieu of interest of principal of the said deposit.

48.—For that the Court below should have held that neither Amir Begum nor Juhi Begum received any money as 'Stipend' under the alleged Wakf Estate.

49.—For that it having been admitted that Juhi Begum was a Purdanashin illiterate lady and that her constituted attorney, Wazir Ali, could neither read nor write except signing her own name, the Court below should have rejected the receipts (Ext. showing payment as 'stipend') as highly suspicious and not genuine in view of the peculiar circumstances under which they were obtained.

50.—For that the Court below should have held that this ingenuous method of making entries of payments of interest etc., due to Juhi Begum on the said deposit as 'stipend' was subsequently adopted as an afterthought.

51.—For that the Court below should not have overlooked the fact that there is no evidence on record showing any such payment as (stipend) during the life time of Kamar Kader and even up till 1925.

52.—For that the Court below should further have held that the intentional withholding of all the papers relating to the period of Prince Kamar Kader throws considerable doubt on the entries in the cash books which have not been kept in a proper and regular manner and an adverse inference ought to have been drawn against the defence.

53.—For that the Court below has erred in altogether overlooking the fact that out of the said deposit of Rs. 3,000, Rs. 1,200 is still due by the estate to Juhi Begum.

54.—For that there is no evidence on record showing that the alleged Wakfnama was ever acted upon during the life-time of Prince Kamar Kader and even up till 1923.

55.—For that the Court below should altogether have overlooked the Exhibits J4, J5 in view of the circumstances that they

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do not throw any light on the fact as to whether the alleged Wakfnama said to have been executed by the Prince was at all acted upon or given any effect to.

56.—For that the Court below has erred in overlooking the fact that the properties being in possession of Saheba Khatoon as lessee, the Wakif could not transfer the same to himself as Mutwalli and that no attornment was made of Saheba Khatoon to himself as such.

57.—For that there being no evidence on record as to any rent having been paid by Saheba Khatoon to Prince Kamar Kader or after his death to Syedali and the alleged Wakf being thus kept in suspense during the period till the expiry of the lease, the Court below should have held that the said Wakf not having been acted upon by the Wakif, is invalid under the Shia Law.

58.—For that there being no rate-bills, Dhakilas, Cheque-muris, account books etc, of the time of Prince Kamar Kader in evidence, the Court below is wrong in thinking that the properties were treated as Wakf properties.

59.—For that in view of the entry in the cash book of 1927 Ext. U, that the papers of the estate relating to the period of Kamar Kader which had been taken possession of by the curator immediately on his death, were all taken back from the Curator's Office, and there being no explanation for non-production of these papers, the Court below was wrong in not drawing the inference that the alleged Wakf had not been acted upon by the Prince during his lifetime.

60.—For that the Court below should have held that the alleged Wakf was never acted upon by the Prince during his lifetime, and as such the same is void.

61.—For that the observations of the Court below that 'acting upon the Wakf is not a necessary condition for the validity of a Shia Wakf' are illegal.

62.—For that none of the essential conditions and formalities having at all been observed or followed at the time when the alleged Wakf was said to have been executed, the Court below should have held that there was no valid Wakf according to Shia Law and as such the alleged Wakf was inoperative and invalid in law.

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In the High Court of Judicature at Fort William in Bengal.

(Civil Appellate Jurisdiction).

Appeal from Original Decree No. 25 of 1936.

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63.—For that the Court below has evidently been led into an erroneous conception of the law in saying—"the next thing done by him was that he converted premises No. 123 Circular Garden Reach Road into a mosque and Imambara" inasmuch as the creation of a mosque or Imambara in a Shia house does not necessarily premise or imply the existence of any Wakf.

64.—For that upon the evidence on record the Court below should have held that mosques and Imambaras are common in every Shia house for the performance of religious ceremonies such as Muharram, Chehullum and Nowchandi Majlishes, distribution of alum to the poor etc.

65.—For that it being admitted that premises No. 123 Circular Garden Reach Road is the residential house of the defendants, the Court below should not have relied on the inconsistent and unreliable evidence of witnesses who deposed contrary to such admissions.

66.—For that there being no satisfactory evidence on record and it being admitted by Syed Ali that the Prince was heavily involved in debts at the time the alleged Wakfnama was said to have been executed by him, the Court below should have held that the same was void in law.

67.—For that the Court below has materially erred in law in ignoring the well-known principle of the Imamia Law that a Shia Mahomedan cannot create a valid Wakf unless his debts are paid off.

68.—For that it being apparent that the Wakf in question not being a testamentary Wakf but a Wakf taking effect immediately on execution, the Court below has erred in finding that 'even belate entry about mutation will suffice'.

69.—For that there being no evidence on record that the proprietary rights in the property dedicated were extinguished and that the Wakif severed all connections therewith as owner, and there being positive evidence that proprietary rights were retained, the Court below was wrong in finding that there was change in possession or ownership of the same.

70.—For that there being no evidence on record as to when, how at whose instance, changes of names in the Corporation registers Ext. O series were made, the findings of the Court below that Ext. O series 'show a change of possession in proprietary

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right to that as a Mutwalli' are wholly misleading, inconsistent and erroneous.

71.—For that the observation of the Court below that 'It can not be suggested that petition for mutation must have been made after his death' is wholly erroneous and inconsistent with the evidence on record in view of the fact that the evidence of D. W. 6 Hari Santosh Chatterji and also some of the entries in the cash Book of 1951 (Ext. N Series) makes it clear that these changes had been made after the death of Prince Kamar Kader.

72.—For that there being no direct evidence as to mutation of names being effected during the lifetime of Kamar Kader, the Court below has erred in holding that it must have been done by the Prince.

73.—For that in the absence of any clear and satisfactory evidence on record, the Court below should have held that change of names in the Corporation registers (Ext. O series) were not made during the lifetime of Prince Kamar Kader.

74.—For that in view of the evidence on record (Exts. 30, 30a, 31 and Exts II to V) the Court below should have held that there was no divestment of ownership by the Wakif and the alleged Wakf is void in law.

75.—For that the Court below is wrong in ignoring altogether the direct evidence on record that Amir Begum and Juhi Begum were admittedly in possession of the properties, and that they used to realise their share of the income thereof independently by their own Tahsildars after the death of the Prince.

76.—For that the Court below was wrong in not considering the most material evidence in the case (Ext.) which showed that Amir Begum leased out a portion of the property to Wazir Ali on receipt of rent in her own right after the death of the Prince.

77.—For that immediate divestment of ownership of the entire corpus of the Wakf being essentially necessary the findings of the Court below that 'Possession of a part is sufficient to prove transmutation of possession of the whole' are wholly erroneous and contrary to the provisions of law, and are against the spirit of the Shia law.

78.—For that Saheba Khatoon being in actual possession of the properties as lessee thereof, the Court below should have held

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In the High Court of Judicature at Fort William in Bengal.

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that the Puttah and Kabulyat (Ext. S and Ext. K1) did not support the defendants on the question how the alleged Wakf properties were subsequently dealt with.

79.—For that the performance of religious ceremonies, such as, Moharram, Chehullum, Nowchandi Majlishes, distribution of alms to the poor etc., being common in every Shia family independent of any Wakf, and as such, the observations of the Court below that 'delivery of possession may be evidenced by the fact that subject of the Wakf is put to the object of the Wakf', are wholly misleading and meaningless.

80.—For that the findings of the Court below that "It is proved by unrebutted evidence in these suits that the objects of the trust were carried out and payments were made to beneficiaries" are wholly incorrect and inconsistent with the evidence on record.

81.—For that the findings of the Court below that "It is not proved that the Wakf was not given effect to", are in direct conflict with the case as established by the evidence.

82.—For that the Court below has eviently erred in its observations that "Subsequent conduct cannot be looked into as to whether the Wakif intended to divest himself of the proprietary interest or whether Wakf has been completed or not", which betray a conclusion in dealing with the legal aspect of the question.

83.—For that the finding of the Court below that "the Wakf becomes operative simply on the happening of the contract of Wakf" are wholly incorrect and inconsistent with the provisions of Shia Law.

84.—For that there being no evidence in the case that all the essential formalities and conditions requiring its validity under the Shia Law have at all been followed and adhered to by the Wakif at the time the alleged Wakf was said to have been executed the Court below should have held that the same was wholly void.

85.—For that the findings of the Court below that the "declaration about the trust is necessary and being in admission in derogation of his personal rights, the admission is conclusive in the matter" are wholly wrong and inapplicable to the present case inasmuch as a mere declaration of admission on the part of the Wakif, might make the Wakf absolute under the Hanafi Law but it does neither complete the Wakf nor make it valid

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under the Shia Law, unless accompanied by delivery of possession to the Mutwalli.

86.—For that the Court below should not have placed any reliance on the judgment in T. S. 120 of 1930 (Ext. B5) in view of the fact that the learned Subordinate Judge, in that suit has adjudicated upon a point which has left open and not pressed by the parties at the trial.

87.—For that the Court below has erred in holding that the decision in that suit is legally binding on the parties in as much as the plaintiff, in Suit No. 2 of 1934, not being a party to that suit and an appeal against that decision having been pending in this Hon'ble High Court, the same is still *sub judice*.

87(a).—For that the decision on the question of *res judicata* is illegal.

88.—For that the observations of the Court below—"that there is nothing in the Wakfnama to the effect that the settler is to get so much out of the profits or usufruct of the Wakf property himself for his own benefit" are in direct conflict with the provisions of paragraphs 6 and 7 of the alleged Wakfnama whereby a major portion of the usufruct of the property had been reserved for the settler himself in direct violation of the mandatory injunctions of the Shia Law.

89.—For that the Court below should have observed that reservation of interest in this case for the settler himself was an indirect method of appropriating the profits of the properties which he was forbidden to do directly under the Shia Law, and as such should have held that the alleged Wakf was void in law.

90.—For that "eating out" of the property by the settlor as Mutwalli, under the Shia Law literally means nothing more than taking only of so much allowance as to keep the soul and body together and as such the finding of the Court below that—"It is lawful for a Wakif to eat himself out of the property as Mutwalli and to take allowance fixed for Mutwallis generally" is wholly wrong and against the spirit of Shia Law.

91.—For that the Court below should have held that as reservation of unreasonable allowances by the settlor as Mutwalli is in derogation of the provisions of Shia Law, the alleged Wakf is void.

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No. 97. Memorandum of Appeal, presented on the 26th November, 1935.

92.—For that the Court below has totally failed to appreciate that under the Shia Law a settlor as Mutwalli, cannot eat out of the property more than what is necessary for bare maintenance and has thus materially erred in saying that "if looking at the standard of their lives he fixed a handsome remuneration for them he cannot be said to have transgressed the Shia Law".

93.—For that the Court below should have held that though a member of a royal family, a settlor, as Mutwalli, cannot, under any pretext, take more allowance than what is allowed under the law.

94.—For that the Court below has failed to appreciate properly the principles as laid down, (with reference to various leading authorities of the Shia Law), in Abadi Begum's case.

95.—For that the findings arrived at by the Court below are one sided, perverse, misleading and inconsistent and contrary to the evidence in the case and as such should be set aside.

96.—For that preservation of any interest as a provision for benefit of the settlor as Mutwalli and the members of his family as such being against the express views of all the leading authorities on the Shia Law, the findings of the Court below that "the provisions in the Wakfnama for Mutwalli chosen from among the settlor and member of his family being fixed at half share of the net income of the Wakf is not illegal" are erroneous.

97.—For that the Court below should not have overlooked the guiding principle under the Shia Law that a settlor, as Mutwalli, should not, in "eating out" of the usufruct of the property, bring it in the category of a provision to be made for his benefit.

98.—For that there being no clause either express or implied in the alleged Wakfnama reserving ultimate benefit to the poor or for charity the Court below should have held that the alleged Wakf was void under the Shia Law.

99.—For that the Court below has materially erred in law in saying that the words '*Kar-e-Kha ir-e-maqul*', being vague and uncertain as used in paragraph 7 of the alleged Wakfnama do not make it necessary 'that the objects of the Wakf should be named'.

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100.—For that there being no directions in the alleged Wakfnama express or implied, reserving any ultimate benefit to the poor or for charity, the observations of the Court below that "the directions laid down by the Wakf for the applications of the usufruct must be carried out" are wholly misleading and meaningless.

101.—For that the Court below should have held that section 3 Clause (b) of the Mussa Iman Wakf Validation Act (Act VI of 1913) does not apply to Wakf under the Shia Law.

102.—For that the words '*Kar-e-Kha-ir*' being not expressive of the definite intention of the Wakf the Court below should have held that the alleged Wakf is void for uncertainty.

103.—For that the alleged Wakf being admittedly neither of a public nor of a religious or charitable character, the Court below should have held that the same was not valid in law.

104.—For that the Court below is wholly wrong in his observations that "It is for the Wakif or settlor to fix the remuneration of the Mutwalli" inasmuch as a Mutwalli under the Shia Law is strictly enjoined not to take more than what is required to meet the bare necessity and is restricted to exercise any powers in that direction.

105.—For that the Court below should have held that the alleged Wakfnama being void *abinitio*, the inheritance was open to the heirs of Kamar Kader on his death, and as such the plaintiff being an assignee of the interest of Juhi Begum (one of the heirs of Kamar Kader) is entitled to get a decree for partition of her $\frac{1}{3}$rd share.

106.—For that it being satisfactorily proved that the alleged Wakfnama was never given effect to and the properties were never dealt with as Wakf properties and that there was no change of ownership or possession by the Wakif and that the same being inoperative and void under the Shia Law, the Court below should not have refused the plaintiff's prayer for partition and for attachment of the same respectively.

107.—For that the Wakf in question being a Wakf taking effect immediately on its execution and the giving over of the 'Mowkoof of the thing appropriated' not having been proved the Court below should have held that it was void in law.

108.—For that the deed of assignment by Juhi Begum in favour of Mahmuda Bibi (Ext. 7) being found to have been duly exe-

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cuted for good consideration, and it being also found that Hashem Ali Khan, 2nd husband of Juhi Begum and his assignee not being entitled to remain in the category of the plaintiff in view of the said deed of assignment, the observations of the Court below—"So she is not entitled to be substituted as sole plaintiff in place of the original plaintiff Juhi Begum in Suit No. 2" are wholly inconsistent and misleading.

109.—For that in any event as Prince Kamar Kader did not divest himself of all the rights that he had in the properties it should have been held that the proprietary right which the Prince retained devolved on Juhi Begum and as such the plaintiff was entitled to a decree for partition of the $\frac{1}{3}$rd share of Juhi Begum therein.

110.—For that the decree as made is otherwise illegal and should be set aside.

111.—For that even upon the alleged Wakf it should have been held that Juhi Begum was entitled to a share and the same having devolved on the plaintiff, the Court below should have decreed the suit at least in part.

112.—For that upon the construction of the alleged Wakfnama it should have been held that there was no valid Wakf created by the deed in question.

114(*sic*).—For that the learned Subordinate Judge had erred in not applying his own mind in deciding the several issues and in relying upon the written argument of the defence advocates which was supplied to him after the close of the arguments and without any notice to the plaintiffs.

115.—For that upon a proper reading of the Wakfnama itself it should have been held that the same had been engineered by Shaheba Khatoon.

116.—For that the finding that Juhi Begum had acquiesced is not based on any legal evidence.

117.—For that upon the entire evidence on record it should have been held that there was no acquiescence by Juhi Begum.

118.—For that upon the facts and circumstances proved and admitted it should have been held that the Wakfnama in question had never been acted upon.

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119.—For that upon the facts and circumstances proved in the case it should have been held that the parties never acted upon the Wakf.

120.—For that upon the treatment accorded to the several properties consisting of the alleged Wakf it should have been held that there was no intention of creating any Wakf.

121.—For that upon the evidence on record it should have been held that the Wakfnama in question had neither been properly executed nor attested.

122.—For that upon the facts and circumstances of the case it should have been held that Saheba Khatoon and Hasan Askari contrived to bring the Wakfnama in question into existence.

(?)122.—For that it being proved that 60 Ballygunge Circular Road being one of the properties included in the alleged Wakf was sold to pay up the compromise decree in T. S. 158 of 1920 it should have been held that the Wakfnama in question was not in any event acted upon.

123.—For that in any event it should have been held that Juhi Begum not having been proved to have any knowledge that the amounts which were being paid to her were by way of stipends and not on account of interest, the entries in cash-books shewing payments as 'stipends' cannot be held to be evidence of acquiescence.

124.—For that the learned Judge had fallen into an error in thinking that a Wakf can be presumed from the fact that a mosque or Imambara was made of a Shia dwelling house.

125.—For that the Court below should in any event have passed a decree in terms of Section 53 of the Transfer of Property Act.

Narendra Nath Mitra,
Advocate.

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No. 93.

Memorandum of Cross objection.

In the High Court of Judicature at Fort William in Bengal.

(Civil Appellate Jurisdiction).

Appeal from Original Decree No. 25 of 1936.

No. 93. Memorandum of Cross-objection, presented on the 26th March, 1936.

Through
Khetra Mohan Chatterjee,
Advocate for Respondent.

10 IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

Civil Appellate Jurisdiction.

Memorandum of Cross Objection.

In the Matter of F. A. No. 25 of 1936

And

Mamuda Bibi *alias* Mohenada Bibi wife of Golam Hossain Oraji of 8/A, Amratola
20 Lane, Calcutta ... ... *Appellant,*

versus

1. Iffat Arah Hamidi Begum widow of Mirza Md. Sayed Ali;
2. Mirza Md. Wahed Ali, minor son of late Mirza Md. Sayed Ali represented by his guardian mother Iffat Arah Hamidi Begum ... ... *Defendants Respondents.*

30 3. Jahanara Jaffri Begum; 4. Keswara Sadeka Begum, daughters of late Mirza Sayed Ali, all of 123, Circular Garden Reach Road, P. S. Watgunge, District 24-Parganas ... ... *Defendants Respondents Nos. 3 and 4, Cross-Objectors,*

5. Nawab Hossein Ali Khan, Baburchiatala Lucknow;
6. Mohammad Isaq Hossein ... ... *Plaintiffs, Respondents.*

40 (Cross-objection valued at Rs. 2119-2-3 costs only).

Whereas the aforesaid plaintiff appellant has preferred an appeal to this Hon'ble Court from the decree of Babu Nikunja Behari Banerjee, Officiating 3rd Subordinate Judge, Alipore, 24-Parganas, passed on 13th June 1935 in Title Suit No. 2 of 1934 and whereas notice of the date fixed for hearing the appeal was served on the respondents Nos. 3 and 4 on ——— the respondents

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In the High Court of Judicature at Fort William in Bengal.

(Civil Appellate Jurisdiction).

Appeal from Original Decree No. 25 of 1936.

No. 98. Memorandum of Cross-objection, presented on the 26th March, 1936.

Nos. 3 and 4 filed this memorandum of cross-objections under Rule 22 of Order XLI of the Code of Civil Procedure on the following amongst other

Grounds.

1.—For that the Court below erred in law in awarding costs to the plaintiff appellant against the defendants Nos. 3 and 4.

2.—For that the suit of the plaintiff having been dismissed against the defendants Nos. 3 and 4, the Court below ought not to have ordered the defendants Nos. 3 and 4 to pay the plaintiff's costs.

3.—For that the Court below has erred in not ordering that costs would follow the event:

4.—For that the Court below has erred in law by not assigning any reason in writing for its order that costs would not follow the event.

5.—For that the Court below has erred in the exercise of its jurisdiction in the matter of awarding costs and has not judicially used the same.

6.—For that in any event of the case the plaintiff was not entitled to any costs and that the Court below has not assigned any reason for the same.

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